



# भारत का राजपत्र The Gazette of India

प्राधिकार से प्रकाशित  
PUBLISHED BY AUTHORITY

साप्ताहिक  
WEEKLY

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सं. 6] नई दिल्ली, मार्च 3—मार्च 9, 2013, शनिवार/फाल्गुन 12—फाल्गुन 18, 1934  
No. 6] NEW DELHI, MARCH 3—MARCH 9, 2013, SATURDAY/PHALGUNA 12—PHALGUNA 18, 1934

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक् संकलन के रूप में रखा जा सके ।  
Separate Paging is given to this Part in order that it may be filed as a separate compilation.

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भाग II—खण्ड 3—उप-खण्ड (iii)  
PART II—Section 3—Sub-section (iii)

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केन्द्रीय अधिकारियों (संघ राज्य क्षेत्र प्रशासनों को छोड़कर) द्वारा जारी किए गए आदेश और अधिसूचनाएं  
Orders and Notifications Issued by Central Authorities (other than the Administrations of Union Territories)

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भारत निर्वाचन आयोग

नई दिल्ली, 20 फरवरी, 2013

आ.अ. 14.—निर्वाचन अर्जी संख्या 4/2009 में पटना उच्च न्यायालय के तारीख 25 नवम्बर, 2011 के निर्णय के विरुद्ध दाखिल की गई सिविल अपील संख्या 2011 का 10728 में भारत उच्चतम न्यायालय के दिनांक 1 फरवरी, 2012 के निर्णय को लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 116ग (2)(ख) के अनुसरण में, निर्वाचन आयोग एतद्वारा प्रकाशित करता है ।

(आदेश इस अधिसूचना के अंग्रेजी भाग में छपा है ।)

[सं. 82/बिहार-लो.स./ (4/2009)/2013]

आदेश से,

तपस कुमार, प्रधान सचिव

ELECTION COMMISSION OF INDIA

New Delhi, the 20th February, 2013

O.N. 14.—In pursuance of clause (b) of Sub-section (2) of Section 116C of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the Order dated 1st February, 2012 of the Supreme Court of India in Civil Appeal No. 10728 of 2011 filed against the Judgement, dated 25th November, 2011 of the High Court of Judicature at Patna in Election Petition No. 4 of 2009.

## IN THE SUPREME COURT OF INDIA

## CIVIL APPELLATE JURISDICTION

## CIVIL APPEAL No(s). 10728 of 2011

MANGANI LAL MANDAL ... Appellant(s)

Versus

BISHNU DEO BHANDARI ... Respondent(s)

## JUDGMENT

**R.M. Lodha, J.**

The returned candidate - Mangani Lal Mandal- is in appeal under Section 116A of the Representation of the People Act, 1951 (for short, '1951 Act') aggrieved by the judgment dated November 25, 2011 of the Patna High Court whereby his election to the 15th Lok Sabha has been set aside.

2. The appellant - the returned candidate - contested the general Parliament election to the 15th Lok Sabha from 7, Jhanjharpur Parliamentary Constituency held on April 23, 2009. Altogether 12 candidates filed their nomination papers, including the appellant, as per the schedule fixed for conducting the said election. On May 16, 2009, the result of the above election was announced and the appellant was declared elected.

3. The respondent – Bishnu Deo Bhandari, a voter (hereinafter referred to as the 'election petitioner')—challenged the election of the returned candidate by filing the election petition before the Patna High Court. The election petitioner alleged that the returned candidate suppressed the facts in the affidavit that he filed along with his nomination papers that he had two wives and the dependent children by marriage with his first wife. He did not disclose the assets and liabilities of his first wife and the dependent children born out of that wedlock. The challenge to the election of the returned candidate was brought under Section 100 (1) (d) (iv) of the 1951 Act and it was prayed that the election of the returned candidate be declared to be void.

4. The returned candidate traversed the averments made by the election petitioner and also raised diverse objections, inter alia, that the election petition did not disclose any cause of action nor it contained the concise statement of material facts.

5. The High Court, on the basis of the pleadings of the parties, framed as many as seven issues and, after recording the evidence, held that the returned candidate failed to furnish information about his first wife and the dependents in the affidavit filed along with his nomination papers. The High Court heavily relied upon the two decisions of this Court in *Union of India Vs. Association for Democratic Reforms & Anr.*<sup>1</sup> and *People's Union for*

*Civil Liberties (PUCL) & Anr. Vs. Union of India & Anr.*<sup>2</sup> and held that the suppression of facts by the returned candidate with regard to the assets and liabilities of his first wife and the dependent children born out of that wedlock was breach of the Constitution- viz. Article 19(1) (a) and for such breach and non-compliance, the candidate who has not complied with and breached the right to information of electors and has won the election has to suffer the consequence of such non-compliance and the breach. The High Court, in view of the above, set aside the election of the returned candidate from Jhanjharpur Parliamentary Constituency being void under Section 100 (1) (d) (iv) of the 1951 Act.

6. We have heard Mr. A. Sharan, learned senior counsel for the appellant, and Mr. S.B.K. Manglam, learned counsel for the respondent.

7. The Appeal deserves to be allowed on the short ground which we indicate immediately hereinafter.

8. Section 100 of the 1951 Act provides for grounds for declaring election to be void. As we are concerned with Section 100 (1) (d) (iv), the same is reproduced which reads as under :—

"100. Grounds for declaring election to be void.- (1) Subject to the provisions of sub-section (2) if the High Court is of opinion—

(a) x                      x                      x                      x

(b) x                      x                      x                      x

(c) x                      x                      x                      x

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially, affected—

(i) x                      x                      x

(ii) x                      x                      x

(iii) x                      x                      x

(iv) by any non-compliance with the provisions of the Constitution or of this Act or any rules or orders made under this Act,

the High Court shall declare the election of the returned candidate to be void.

(2)                      x                      x                      x                      x'

9. A reading of the above provision with Section 83 of the 1951 Act leaves no manner of doubt that where a returned candidate is alleged to be guilty of non-compliance of the provisions of the Constitution or the 1951 Act or any rules or orders made thereunder and his election is sought to be declared void on such ground, it is essential for the election petitioner to aver by pleading material facts that the result of the election insofar as it concerned the returned

1 (2002) 5 SCC 294

2 (2003) 4 SCC 399

candidate has been materially affected by such breach or non-observance. If the election petition goes to trial then the election petitioner has also to prove the charge of breach or non compliance as well as establish that the result of the election has been materially affected. It is only on the basis of such pleading and proof that the Court may be in a position to form opinion and record a finding that breach or non-compliance of the provisions of the Constitution or the 1951 Act or any rules or orders made thereunder has materially affected the result of the election before the election of the returned candidate could be declared void. A mere non-compliance or breach of the Constitution or the statutory provisions noticed above, by itself, does not result in invalidating the election of a returned candidate under Section 100(1) (d) (iv). The sine qua non for declaring election of a returned candidate to be void on the ground under clause (iv) of Section 100(1) (d) is further proof of the fact that such breach or non-observance has resulted in materially by affecting the result of the returned, candidate. In other words, the violation or breach or non-observation or non-compliance of the provisions of the Constitution or the 1951 Act or the rules or the orders made thereunder, by itself, does not render the election of a returned candidate void Section 100(1) (d) (iv). For the election petitioner to succeed on such ground viz., Section 100 (1) (d) (iv) , he has not only to plead and prove the ground but also that the result of the election insofar as it concerned the returned candidate has been materially affected. The view that we have taken finds support from the three decisions of this Court in (1) Jabar Singh Vs. Genda Lal<sup>3</sup>; (2) L.R. Shivaramagowda and Others Vs. T. M. Chandrashekhar ( dead ) by LR.s. and Others.<sup>4</sup> and (3) Uma Ballav Rath (Smt ) Vs. Maheshwar Mohanty (Smt) and others<sup>5</sup>.

10. Although the impugned judgment runs into 30 pages, but unfortunately it does not reflect any consideration on the most vital aspect as to whether the non-disclosure of the information concerning the appellant's first wife and the dependent children born out of that wedlock and their assets and liabilities has materially affected the result of the election insofar as it concerned the returned candidate. As a matter of fact, in the entire election petition there is no pleading at all that suppression of the information, by the returned candidate in the affidavit filed along with the nomination papers with regard to his first wife and dependent children from her and non-disclosure of their assets and liabilities has materially affected the result of the election. There is no issue framed in this regard nor there is any evidence let in by the election petitioner. The High Court has also not form any opinion on this aspect. We are surprised that in the absence of any consideration on the above aspect, the High Court has declared the election of the returned candidate to the 15th Lok Sabha from the Jhanjharpur Parliamentary Constituency to the void. The impugned judgment of the

High Court is gravely flawed and legally unsustainable. As a matter of law, the election petition filed by the election petitioner deserved dismissal at threshold yet it went into the whole trial consuming Courts precious time and putting the returned candidate to unnecessary trouble and inconvenience.

11. Civil Appeal is, accordingly, allowed. The impugned judgment dated November 25, 2011 is set aside. The election petition filed by the respondent is dismissed with costs which we quantify at Rs. 1,00,000 (Rupees One Lakh).

.....J.  
(R. M. LODHA)

New Delhi .....J.  
February 1, 2012 (Sudhansu Jyoti Mukhopadhyaya)

[No. 82/BR-HP/(4/2009)/2013]

By Order,  
TAPAS KUMAR, Pr. Secy.

नई दिल्ली, 1 मार्च, 2013

**आ.अ. 15** .—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, निर्वाचन आयोग एतद्वारा निर्वाचन अर्जी सं. 1/2009 में दिये गये उच्च न्यायालय, पटना के तारीख 6 फरवरी, 2013 के आदेश को प्रकाशित करता है।

(आदेश इस अधिसूचना के अंग्रेजी भाग में छपा है।)

[सं. 82/बिहार-लो.स./ (1/2009)/2013]

आदेश से,  
तपस कुमार, प्रधान सचिव

New Delhi, the 1st March, 2013

**O.N.15** .—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby published Order dated the 6th February, 2013 of the High Court of Judicature at Patna in Election Petition No. 1 of 2009.

## IN THE HIGH COURT OF JUDICATURE AT PATNA

### Election Petition No. 1 of 2009

In the matter of an application under Sections 80, 80A and 81 of the Representation of the People Act, 1951

Satya Narayan Singh, son of late Dwarika Prasad Singh, resident of village Dewka, P.O. Kaithi, P.S. Chautham, district Khagaria

... Petitioner/s

## Versus

1. The Election Commission of India through the Chief Election Commissioner.
2. The Chief Electoral Officer, Bihar, Patna.
3. The Returning Officer-cum-District Magistrate, Khagaria.
4. Dinesh Chandra Yadav, son of Ramdhari Yadav, resident of village Itahari, Tola Banma, P.O. Itahari, P.S. Salkhua, District Saharsa.

.... Respondent/s

**Appearance :**

For the Petitioner : M/s. P.K. Verma, Sr. Advocate,  
Lakshmi Kant Tiwary,  
Ujjwal Kumar Sinha, Advocates

For Respondent no. 4 : M/s. S.B.K. Mangalam, Pramod  
Mishra, Jyoti  
Prabhakar, Advocates.

**CORAM : HONOURABLE MR. JUSTICE V.N. SINHA****C.A. V. JUDGMENT**

**V.N. SINHA, J.** —Election petitioner has filed this petition under Sections 80, 80A and 81 of the Representation of the People Act, 1951 (hereinafter referred to as the Act) praying inter alia to declare the election of respondent no.4 from 25-Khagaria Parliamentary Constituency held pursuant to notification dated 2-4-2009 on 30-4-2009, result whereof was declared on 16-5-2009 (hereinafter referred to as the impugned election) as void on the ground mentioned in Sub-section (1) (c) of Section 100 of the Act that the nomination paper of the election petitioner has been improperly rejected under order dated 11-4-2009, Annexure-3 passed by the Returning Officer.

2. Election petitioner presented his nomination paper on 6-4-2009 before the Returning Officer for contesting the impugned election. Returning Officer having received the nomination paper of the petitioner issued check list of documents under his own signature, copy whereof is contained in Annexure-2 to this petition indicating filing of nomination dated 6-4-2009 by the petitioner at 1.25 P.M. Having received the nomination paper from the petitioner and issued the check list of documents, Returning Officer did not point out any defect, deficiency in the nomination paper or the documents including Form 26 filed by the petitioner along with nomination paper. Returning Officer, however, rejected the nomination of the petitioner under order dated 11-4-2009, Annexure-3 on the ground that Form 26 is not duly sworn by the petitioner before a Magistrate of 1st class or a Notary public or Oath Commissioner appointed by the High Court. Having received the rejection order petitioner filed his objection dated 12-4-2009 before the Returning Officer, copy whereof was also forwarded to the Chief Election Officer, Election Commission of India, New Delhi (hereinafter referred to as the Commission) which

is also annexed with the election petition as Annexure-4. In paragraph 6 of the election petition, election petitioner explained the circumstances, in which he could not support the statements made in Form 26 filed along with nomination paper, Annexure-5 by an affidavit duly sworn before a Magistrate of 1st class, Notary public or Oath Commissioner appointed by the High Court. In paragraph-7 of the election petition, petitioner has further stated that order dated 11-4-2009, Annexure-3 rejecting his nomination paper is contrary to the grounds for rejection of nomination paper as provided under sub-section-(2) of Section 36 of the Act. In paragraph 8 of the election petition petitioner has further stated that Form 26 is prescribed by Rule 4A of the Conduct of Election Rules, 1961 (hereinafter referred to as the Rules) so as to enable the candidate contesting the election under the Act to furnish further information in the light of Section 33A of the Act out failure of the candidate to support the information furnished in Form 26 by an affidavit cannot be a ground for rejection of the nomination paper as the grounds for rejection provided under Section 36 of the Act does not include failure to support the information given under form 26 by an affidavit. In the light of the aforesaid interpretation of the Act and the Rules petitioner further submitted in the same paragraph that the order rejecting his nomination paper, Annexure-3 is wholly improper, illegal and without jurisdiction. In paragraph 9 of the election petition petitioner has further submitted with reference to sub-section-(4) of Section 36 of the Act that the Returning Officer is not empowered to reject any nomination paper on the ground of defect which is not of substantial character. In this connection, it is further submitted in the same paragraph that failure to support the information furnished under Form 26 by an affidavit is not a substantial defect as the same is not included in Section 36 of the Act, as such, the order rejecting the nomination paper of the petitioner is clearly illegal. In paragraph 10 of the election petition petitioner has further submitted that wrongful rejection of nomination paper entails setting aside of the election on the ground of wrongful rejection of the nomination paper under sub-section (1) (c) of Section 100 of the Act but the wrongful acceptance of the nomination paper is not a ground for setting aside the election unless heavy burden is discharged by challenger under sub-section (1)(d) of Section 100 of the Act by proving that the wrongful acceptance of the nomination paper has materially affected the election of the returned candidate. In paragraph 11 of the election petition, it has been submitted that petitioner was not allowed any opportunity to rectify the defect in form 26 and on this ground also the order rejecting his nomination paper is illegal and improper. In paragraph 12 statement has been made that the validity of the order dated 11-4-2009 rejecting the nomination paper of the election petitioner was challenged in High Court by filing C.W.J.C. No.4877 of 2009 on the ground that the rejection order, Annexure-3 is apparently illegal, this Court may exercise its extraordinary jurisdiction to quash the same.



The High Court, however, was of the opinion that the case does not entail any exceptional situation which calls for interference under Article 226 of the Constitution of India and having observed as above, the writ petition was dismissed under order dated 17-4-2009, against which petitioner preferred Special Leave to Appeal (Civil) No.10488/09 which was also dismissed as withdrawn on 28-4-2009 with liberty to file election petition. In paragraphs 14, 15 of the election petition, petitioner has further averred that the result of the impugned election was declared on 16-5-2009 in which respondent no.4 was declared elected. Present election petition has been filed for declaring the election of returned candidate i.e. respondent no.4 as void under sub-section (1)(c) of Section 100 of the Act i.e. improper rejection of the nomination paper of the election petitioner with further direction to the Commission to hold fresh election.

3. In response to the election petition contesting respondent no. 4 has only filed his written statement. In paragraphs-1 to 4 of the written statement respondent no.4 has sought apology from this Court for inconvenience caused due to his non-appearance in the matter and the matter had to proceed *ex parte*, whereafter it transpired that in fact no notice was served upon the deponent and steps for substituted service was taken by publishing notice in the newspaper. In paragraph 5 of the written statement contesting respondent states that election petition is neither maintainable in law nor on facts. In paragraph 6 respondent no.4 states that election petition as framed and filed by the election petitioner suffers from inherent defects of non-compliance with the provisions of Sections 81, 82 of the Act. In paragraph 7 respondent no.4 has quoted Section 83 of the Act. In paragraph-8 respondent no.4 with reference to Section 83 of the Act has stated that election petitioner is required to make a concise statement of material facts in his election petition on which he relies and the contents of the petition is required to be verified in the manner prescribed for verification of plaint in the Code of Civil Procedure, 1908. In paragraph 9 respondent no.4 has stated that from the copy of the election petition served on respondent no.4, it is clear that pleadings made in the election petition has not been verified by the election petitioner in the manner prescribed under Order 6 Rule 15 of the C.P.C. and thus election petition is not maintainable in the eye of law and is fit to be dismissed without trial as there is no verification of the pleadings at all. In paragraph 10 of the written statement respondent no. 4 has stated that it would be relevant to state that there is distinction between the verification and affidavit. Law requires verification and not affidavit, though an affidavit has been filed in support of the election petition but there is no verification at all. In paragraph 11 of the written statement respondent no.4 has stated that Order 6 Rule 2 C.P.C. provides that every pleading shall contain and contain only a statement in a concise form of the material facts on

which the party pleading relies for his claim or defence as the case may be, but not the evidence by which the claim/defence is to be proved. In paragraph 12 of the written statement respondent no.4 has stated that punishment for failure to comply with the provisions of Order 6 Rule 2 C.P.C. is provided under order 7 Rule 11(a) C.P.C. i.e. for rejection of the plaint if it does not disclose a cause of action. In paragraph 13 of the written statement respondent no.4 has stated that requirement of Section 83 of the Act read with Order 6 Rule 2 C.P.C. has been the subject matter of consideration in large number of cases whereunder it has been categorically held that failure to plead even a single material fact would lead to incomplete cause of action and the statement of claim becomes bad for which the election petition should be dismissed by exercising the power under order 7 Rule 11 C.P.C. In paragraph 14 of the written statement respondent no.4 has stated that it has been held in catena of decisions that even if Section 83 is not referred to in Section 86 of the Act, yet power under Order 7 Rule 11 C.P.C. can be exercised for rejection of plaint in election matters. In paragraph 15 of the written statement respondent no.4 has stated that after going through the pleadings of the election petition it transpires that the election petitioner has made desperate allegations in his election petition and has omitted to plead many facts deliberately in his election petition to complete the chain of events and therefore the election petition is fit to be dismissed under Order 7 Rule 11(c) C.P.C. In paragraph 16 of the written statement respondent no.4 has stated that case of the election petitioner in the election petition is that his nomination paper was rejected for failure to support the statements made in Form 26 with an affidavit but in the election petition petitioner has nowhere stated that on the date of scrutiny election petitioner was himself present at the time of scrutiny and despite his readiness shown to remove the defect his nomination paper was rejected by the Returning Officer. In paragraph 17 of the written statement respondent no.4 has stated that at the time of scrutiny the representative of the election petitioner was present and in his presence defect in form 26 filed by the election petitioner along with nomination paper was pointed out and his representative was informed but his representative did not ask the Returning Officer to provide him opportunity to get the defects removed so that the nomination paper of election petitioner is not rejected. It is further stated in the said paragraph that representative of the election petitioner remained quite throughout scrutiny and after rejection of the nomination paper of the election petitioner by the Returning Officer the representative left the office of the Returning Officer with knowledge that nomination paper of the election petitioner has been rejected. In paragraph 18 of the written statement respondent no.4 has stated that from the conduct of the election petitioner as also the conduct of his authorised representative, it is apparently clear that the mistake was committed by the election petitioner deliberately to

challenge the election of deponent after he succeeds in the election. In paragraph 19 of the written statement respondent no.4 has stated that it is well settled law that an election dispute is not like the ordinary lis. between the two individuals. The entire electorate is vicariously, if not inertly before the court and therefore, trial of election petitions must proceed with great care and caution. It is also stated in the said paragraph that desperate allegations would not constitute a triable issue and the election petition must be thrown out at the outset itself. In paragraph 20 of the written statement respondent no.4 has stated that the election petitioner has not come to this Court with clean hands and has suppressed the material facts in his election petition, the election petition is fit to be dismissed without trail. In paragraph 21 of the written statement respondent no.4 has further stated with reference to Section 82 of the Act that the election petition is fit to be dismissed for joining three officials as respondent in the election petition. In paragraph 22 of the written statement respondent no.4 has stated that paragraph 1 of the election petition under reply is matter of record and therefore need not be commented upon. In paragraph 23 of the written statement respondent no.4 has stated that the statement made in paragraph 2 of the election petition under reply that petitioner filed his nomination paper on 6-4-2009 is a fact within the special knowledge of the election petitioner and therefore need no reply. As regards issue of check list, Annexure-2 without indicating any defect in the nomination paper of the election petitioner is concerned, respondent no.4 has stated that issue of check list would not mean that the nomination paper filed by the election petition is defect free if he has not alleged any mischief by the custodian of the nomination paper that his affidavit was lost intentionally and the nomination paper was rejected. In paragraph 24 of the written statement respondent no.4 has stated that it appears that the Assistants deputed to assist the Returning Officer at the time of presentation of nomination paper were negligent towards their duties and therefore, could not look into the nomination paper of the election petitioner meticulously, as a result of which check list, Annexure-2 was issued by the Returning Officer which was prepared by the Assistants assisting the Returning Officer. In paragraph 25 of the written statement respondent no.4 has considered the statement made in paragraph-3 of the election petition under reply and stated that the said statement is misconceived and denied. It is further stated in the said paragraph that only because the check list was issued in favour of the election petitioner would not mean that his nomination paper was defect free, if at the time of scrutiny of nomination paper defect in the. nomination paper of the election petitioner was apparent on the face of it. In paragraph 26 of the written statement respondent no.4 has stated that statement made by the election petitioner in paragraph 4 of the election petition under reply is matter of record, therefore, require no comment. In paragraph 27 of the written statement respondent no.4 has

considered the statement made in paragraph-5 of the election petition under reply and stated that statements made therein are matters of record and need no reply. In the same paragraph, respondent no.4 further stated that so called objection filed by the election petitioner on 12-4-2009 before the Returning Officer was misconceived as after the scrutiny of nomination paper if decision is taken by the Returning Officer, he is not competent to entertain any objection against his own decision as law has not conferred on the Returning Officer any power of review. In paragraph 28 of the written statement respondent no.4 has considered the statement made in paragraph-6 of the election petition under reply and stated that the same is misconceived and therefore denied. The document contained in Annexure-5 of the election petition is Form 26 submitted by the election petitioner along with his nomination paper, which according to respondent no.4 was probably not read by the election petitioner though he is a lawyer and according to the information supplied by him regarding the nomination paper, itself his qualification is M.A., L.L.B and has earlier contested several elections. In paragraph 29 of the written statement respondent no.4 has stated that second paragraph of Form 26, Annexure-5 of the election petition categorically states that it is an affidavit to be produced by the candidate before the Returning Officer of the Parliamentary Election to which the candidate is seeking his election and in view of the contents of the said paragraph according to respondent no.4 there is no room for any doubt which led the election petitioner not to support the contents of Form 26, Annexure-5 by an affidavit while filing his nomination paper. In paragraph 30 of the written statement respondent no.4 has stated that according to the instructions of the Commission candidate is required to file two separate affidavit along with his nomination paper. One with regard to assets, liabilities and other with regard to his antecedents. In paragraph 31 of the written statement respondent no.4 has stated that election petitioner filed his declaration regarding assets, liabilities, which is duly supported by an affidavit affirmed before Notary Public and thus in respect of second affidavit supporting Form 26 he can not plead confusion on the ground that Form 26 does not mention about seal and signature of the authority before whom affidavit supporting Form 26 has to be affirmed. In paragraph 32 of the written statement respondent no.4 has considered the statement made by the election petitioner in paragraph 7 of the election petition and stated that the statements under reply are misconceived in view of paragraph-9.6 of Chapter VI of the Handbook for Returning Officers for conducting 2009 Parliamentary Election (hereinafter referred to as the Handbook), which provides the list of the defects which are required to be treated as a defect of substantial nature for which a nomination paper could be rejected. In the category of other cases, failure to file affidavit supporting Form 26 and/or affidavit required by the Commission for disclosing criminal antecedent, assets, liabilities and

educational qualification are the defects of substantial nature and therefore, nomination can be rejected for the said defect. In paragraph 33 of the written statement respondent no. 4 has stated that it is admitted position that information supplied by the election petitioner in Form 26 was not supported by an affidavit in spite of instruction contained in paragraph 9.6 of Chapter VI of the Handbook and Returning Officer had committed no illegality if he has rejected the nomination paper of the election petitioner on that ground. In paragraph 34 of the written statement respondent no. 4 has stated that order of rejection was recorded by the Returning Officer in presence of authorised representative of the election petitioner who neither raised any objection nor sought for any time to remove the defect. It has further been stated in the said paragraph that the election petitioner should congratulate himself for the aforesaid vital omission in his nomination paper, though he himself is a lawyer and should not blame any other person or authority for rejection of his nomination paper. It is also stated in the said paragraph that authorised representative of the election petitioner was also present at the place of scrutiny. In paragraph 35 of the written statement respondent no. 4 has stated that silence of the election petitioner at the time his nomination paper was rejected by the Returning Officer, has silenced his voice but unnecessarily he is dragging this deponent in litigation and is consuming valuable time of the court at the cost of poor tax payer and other litigants who sincerely deserve the protection of the court. In paragraph 36 of the written statement respondent no. 4 has stated that the interpretation placed by the election petitioner of Section 36 (2) of the Act is also misconceived. It is further stated in the said paragraph that after judgment of the Supreme Court in the case of People's Union for Civil Liberties (PUCL) and Another Vs. Union of India and Another the provisions of Section 33B of the Act became ultravires, a candidate is required to comply with the instruction of the Commission issued in the said judgment of the Supreme Court and if a candidate fails to comply, there would be no other punishment but to reject his nomination paper by the Returning Officer. In paragraph 37 of the written statement respondent no. 4 has considered the averments made in paragraph 8 of the election petition under reply and stated that the statement made therein are misconceived and denied. It is further stated in the same paragraph that only because Section 33A of the Act is not included under Section 36(4) of the Act that would not mean that for non-compliance of the provisions of Section 33A, a nomination cannot be rejected as the Returning Officer has been directed by the Commission to reject a nomination paper if information required under Section 33A is not furnished by the candidate on affidavit. In paragraph 38 of the written statement respondent no. 4 has stated that instruction for conducting the election is issued by the Commission in exercise of its power under Article 324 of the Constitution. The width and extent of the power of the Commission under

Article 324 has been the subject matter of decision of the Supreme Court in catena of cases where the Supreme Court has clearly laid down the law that where there is no legislation on any aspect of conduct of election, Article 324 of the Constitution is reservoir of power for the Commission to issue instruction with respect to free and fair conduct of election and if the instructions were issued by the Commission to reject a nomination paper if required information under Form 26 has not been supported by an affidavit, no fault can be found with the decision of the Returning Officer rejecting the nomination of the election petitioner for his failure to support Form 26 by an affidavit. In paragraph 39 of the written statement respondent no. 4 has dealt with statements made by the election petitioner in paragraph 9 of the election petition and stated that the statements under reply are also misconceived and denied. It is further stated in the said paragraph that it is true that under Sub-section (4) of Section 36 of the Act a nomination paper could not be rejected for a defect which is not of substantial character but a defect which is not of substantial character the concerned candidate or his authorised representative is not interested to remove, the Returning Officer has no option but to reject the nomination paper for a defect which is not of substantial character. In paragraph 40 of the written statement respondent no. 4 has stated that even for defect of non-substantial nature the Returning Officer would be justified to reject a nomination paper if there is none on behalf the candidate to remove the defect. In the instant case, as per the direction of the Commission there was no affidavit of the election petitioner supporting Form 26 the Returning Officer was left with no option but to reject his nomination paper as the authorised representative of the election petitioner who was present in the process of scrutiny did not ask for time and/or had shown his willingness/readiness to remove the defect by granting sometime. In paragraph 41 of the written statement respondent no. 4 has considered the statement made in paragraph 10 of the election petition under reply and has stated that the contents of the paragraph under reply is misconceived and therefore denied. In the same paragraph, it is further stated that it is true that there should not be any wrongful rejection of a nomination paper but it is not that the Returning Officer would be bound to accept the nomination paper with substantial defect even if the concerned candidate is not available for removal of the defect. In paragraph 42 of the written statement respondent no. 4 has considered the statement made in paragraph 11 of the election petition under reply and stated that the same is correct as under paragraph 21.1 of Chapter V of the Handbook there is direction to the Returning Officer to draw the attention of the candidate towards the defect and a memo in this regard is required to be issued to the candidate by the Returning Officer but it does not mean that if the Returning Officer has failed to indicate defect in memo he would be bound to accept a nomination paper if at the time of scrutiny, it is found that required mandatory



affidavits have not been filed along with nomination paper, particularly when the concerned candidate is represented through a representative duly authorised by the candidate concerned and he does not request the Returning Officer for time to remove the defects in the nomination paper. In paragraph 43 of the written statement respondent no. 4 has considered the statements made in paragraphs 12, 13, 14 of the election petition under reply and stated that statements under reply need not be controverted by the deponent since they are matters of record. In paragraph 44 of the written statement respondent no. 4 has considered the statement made by the petitioner in paragraph 15 of the election petition under reply and stated that the statement under reply is misconceived and accordingly, denied. It is further stated in the said paragraph that the nomination of the election petitioner was rejected by the Returning Officer for a defect of substantial character as the representative of the election petitioner was not ready to remove the defect, the election of the deponent cannot be declared void on this ground and the election petition is fit to be dismissed with cost. In paragraph 45 of the written statement respondent no. 4 has stated that in view of the statement made by him in the written statement the election petitioner is not entitled to any relief as prayed in the election petition. In paragraph 46 of the written statement respondent no. 4 has stated that statement made in paragraphs 17 to 19 of the election petition under reply needs no comment. In paragraph 47 of the written statement respondent no. 4 has again stated that the present election petition is devoid of any merit and is, therefore, fit to be dismissed with cost. In paragraph 48 of the written statement respondent no. 4 has stated that he has not filed any written statement like the present one earlier before this Court.

4. Having considered the rival pleadings of the parties, under order no. 36 dated 25-4-2012 following issues were framed :—

(i) Whether the nomination paper of election petitioner for 25 Khagaria Parliamentary Constituency Election 2009 was improperly rejected by the Returning Officer?

(ii) Whether while improperly rejecting the nomination paper of the election petitioner for the aforesaid election, Returning Officer violated the statutory provisions as also the instructions of the Election Commission of India?

(iii) Whether the election petition is maintainable in the light of the provisions contained in Sections 81, 82 and 83 of the Representation of People Act, 1951 and deserved to be dismissed under Section 86 and Order 7 Rule 11 C.P.C.?

5. In support of the election petition, election petitioner examined himself as P.W.-1, his proposer Sri Prabhakar Prasad Singh as P.W. -2, Sri Prabha Shankar Singh as P.W. 3 and Sri Birendra Kumar Singh, Advocate Civil Court, Khagaria as P.W. 4.

6. Election petitioner, P.W. 1 supported the contents of the election petition by filing his examination in chief on affidavit dated 8-12-2011. In paragraph 1 of the examination in chief election petitioner stated that he has filed election petition to declare the election of respondent no. 4 as void and also for direction to hold fresh election for 25 Khagaria Parliamentary Constituency. In paragraph 2 of the examination in chief election petitioner stated that General Election for 25 Khagaria Parliamentary Constituency was notified on 2-4-2009 and as per the election programme the last date for presenting nomination was 9-4-2009 and the election was scheduled to be held on 30-4-2009. In paragraph 3 of the examination in chief election petitioner has stated that for contesting the impugned election he got ticket from Communist Party of India. He filed his nomination paper in proper form duly sworn before the Notary Public, except affidavit in Form 26, which was inadvertently not sworn as required. He further stated in the same paragraph that the Returning Officer after checking the nomination paper including Form 26 did not point out any defect in the same and issued receipt in the form of check list, copy whereof is annexed with the election petition as Annexure-2. In paragraph 4 of the examination in chief election petitioner stated that his nomination paper was rejected by the Returning Officer on 11-4-2009 on the ground that Form 26 was not duly sworn before a Magistrate of 1st Class, Notary Public or Oath Commissioner appointed by the High Court. In the same paragraph it is further stated that the certified copy of the order rejecting the nomination form of the election petitioner was received by the election petitioner on 12-4-2009 and on the same day he filed his objection to the rejection order, copy whereof was also faxed to the Commission but the objection to the rejection order was not considered. Copy of the rejection order dated 11-4-2009 and objection dated 12-4-2009 are annexed as Annexures-3, 4 to the election petition. In paragraph 5 of the examination in chief election petitioner further stated that neither before scrutiny i.e. before passing of order dated 11-4-2009 nor during scrutiny on 11-4-2009 he was ever informed by the authorities about the defect in Form 26 nor was he ever given any opportunity to remove the said defect. In paragraph 6 of the examination in chief election petitioner further stated that impugned election was held as per schedule on 30-4-2009, result whereof was declared on 16-5-2009 in which respondent no. 4 was declared elected. After appearance/filing of written statement by respondent no. 4 and framing of issue under order no. 36 dated 25-4-2012 election petitioner filed further examination in chief on 2-5-2012 in which he again stated that he had filed this election petition for declaring the election of respondent no. 4 from 25-Khagaria Parliamentary Constituency as void and also for a direction to hold fresh election for the said Constituency. He further stated that he filed his nomination paper for contesting the impugned election on 6-4-2009 in four sets on the ticket of Communist Party of India along with the required enclosures including



statement in Form 26. The impugned election was held on 30.4.2009. He also stated in the further examination in chief that he has taken oath of affirmation with respect to his nomination papers before the Returning Officer cum District Magistrate. He further stated in the examination in chief that he had furnished affidavit annexed with the nomination paper duly sworn before the Notary Public. His nomination papers were checked by the Returning Officer on the same day and it was found without any defect as per the check list signed and authenticated by the Assistant/Returning Officer, copy of which has been enclosed as Annexure-2 to the election petition. It is further stated in the further examination in chief that he had furnished all the details regarding criminal cases etc. in the affidavit annexed with nomination form as also duly filled Form-26 as per Rule 4A. He further stated that he had duly signed Form 26 on the same day before the Returning Officer which was annexed with his nomination paper(s) and was checked by the Returning Officer, whereafter oath of affirmation was taken by the election petitioner before the Returning Officer. It is also stated in the examination in chief that the last date for filing nomination paper was 9-4-2009 and the date of scrutiny was 11-4-2009. It is further stated in the further examination in chief that scrutiny was scheduled in the court room of the Returning Officer cum District Magistrate, Khagaria located on the first floor of the Collectorate. It is also stated in the further examination in chief that election petitioner had authorised his proposer Sri Prabhakar Prasad Singh to attend the scrutiny on his behalf as he was recovering from multiple fractures in both his thigh bones suffered in a road accident in October, 2008 and could walk only with the aid of a walker. It is also stated in the further examination in chief that on the date of scrutiny he remained seated in his vehicle in the Collectorate compound. Later in night he was told that his nomination paper has not been accepted by the Returning Officer in spite of request made by his proposer and party leader along with two Advocates. It is also stated in the said examination in chief that he applied for supply of the order if any passed by the Returning Officer so as to know the reasons on which his nomination paper(s) was not accepted. It is also stated that the order of Returning Officer was supplied to the election petitioner on 12-4-2009 whereafter he filed objection petition before the Returning Officer, copy whereof was also forwarded to the Commission through fax, Annexures-3, 4. It is also stated in the further examination in chief that the matter was also argued by three Advocates, namely, M/s. Ashok Kumar Verma, Nalinesh Kumar Sinha, Chamak Lal Singh, who appeared before the Returning Officer on his behalf on 12-4-2009 but nothing was done by the Returning Officer. Hence election petitioner had to rush to Patna and on being advised filed C.W.J.C. No.4877 of 2009 before the High Court, Patna which was heard and dismissed under order dated 17-4-2009 on the ground that the remedy was by way of election petition, copy of the order has already been annexed as Annexure-7 to the

election petition. It is also stated that against the order of the High Court S.L.P. was filed but not accepted on the same ground and therefore, withdrawn on 28-4-2009 with liberty to raise the objection by filing election petition.

7. In cross-examination election petitioner has stated in paragraph 1 that he is Master of Arts and Bachelor of Law. In paragraph 2 of the cross-examination election petitioner has stated that having obtained the licence he practised for about 1 & 2 years and thereafter became whole time worker of Communist Party of India. In paragraph 3 of the cross-examination election petitioner has stated that during his practice period; he had the occasion to see affidavits. In paragraph 4 of the cross-examination election petitioner has stated that affidavit is a statement on oath made before the 1st Class Magistrate or Notary Public. In paragraph 5 of the cross-examination election petitioner has stated that having read the affidavit and verification appended with the election petition, he put his signature over the same. In paragraph 6 of the cross-examination election petitioner has stated that there are 19 paragraphs in his election petition. In paragraph 7 of the cross-examination election petitioner has denied the suggestion that his affidavit supporting the election petition does not deal with paragraphs 7,8,9 and 10. In paragraph 8 of the cross-examination election petitioner has stated that any document which is in the form of an affidavit even without the signature of the Notary or the Magistrate, may be treated as affidavit. In paragraph 9 of the cross-examination election petitioner has stated that the Form 26 shown to him was appended by the election petitioner with his nomination paper, which is marked as Ext. A. In paragraph 10 of the cross-examination election petitioner has stated that it is true that Form 26 which he filed with his nomination paper does not contain the signature and seal of either a Magistrate or Notary Public. In paragraph 11 of the cross-examination election petitioner has stated that he had filed nomination paper for the impugned election in four sets. In paragraph 12 of the cross-examination election petitioner has stated that the Form 26 appended by him with the other three sets of nomination paper also does not contain the signature and seal of either a Magistrate or Notary Public, which is marked as Exts. A/1, A/2 and A/3. In paragraph 13 of the cross-examination election petitioner has stated that before filing nomination for contesting the impugned election, he contested many elections for Assembly, Parliament, Mukhiya and Pramukh. In paragraph 14 of the cross-examination election petitioner has stated that he had been elected member of the Legislative Assembly twice in the year 1990 and 1995. In paragraph 15 of the cross-examination election petitioner has stated that during Assembly election of the year 1990, he was elected member of the Assembly and there was partial tie up of CPI with the Janta Dal. In the same paragraph election petitioner further stated that in his constituency, however, Janta Dal contested the election and defeating Janta Dal candidate,

he was elected member as representative of CPI. In paragraph 16 of the cross-examination election petitioner has stated that during 1995 Assembly Election also, there was tie up with the Rastriya Janta Dal Party. In paragraph 17 of the cross-examination election petitioner has stated that after he deposited the security amount for contesting the impugned election, he was handed over copy of the Hand Book for the candidate along with nomination paper. In paragraph 18 of the cross-examination election petitioner has stated that he read the Hand Book for the candidate but as he had suffered fracture, he was under pain and could not go through the Hand Book for the candidate extensively in detail. In paragraph 19 of the cross-examination election petitioner has stated that while filling up the nomination paper, he took assistance from others. In paragraph 20 of the cross-examination election petitioner has stated that for presenting the nomination paper, he had himself come to the Returning Officer. In paragraph 21 of the cross-examination election petitioner has stated that for contesting any election, oath is required to be taken before the Returning Officer. In paragraph 22 of the cross-examination election petitioner has stated that those who are in custody, they may take oath before the Jail Superintendent. In paragraph 23 of the cross-examination election petitioner has stated that he is not aware whether any prospective candidate, who is ill, can take oath before the Doctor attending on him. In paragraph 24 of the cross-examination election petitioner has stated that at the time of filing of his nomination paper, his four proposers, Returning Officer, Assistant Returning Officer and the staff assisting them were present. In paragraph 25 of the cross-examination election petitioner has stated that for conducting the impugned election, there were three Assistant Returning Officers. In paragraph 26 of the cross-examination election petitioner has stated that at the time of presentation of his nomination paper, only one of the three Assistant Returning Officers was present. In paragraph 27 of the cross-examination election petitioner has stated that at the time of presentation and receipt of his nomination paper, Sri S.K. Pathak, Assistant Returning Officer was present. In paragraph 28 of the cross-examination election petitioner has stated that during election, Sri S.K. Pathak was holding the substantive post of Director, District Rural Development Agency, Khagaria. In paragraph 29 of the cross-examination election petitioner has stated that after administering oath, his nomination paper was received by the Returning Officer. In paragraph 30 of the cross-examination election petitioner has stated that he had verified the contents of his nomination paper(s) before presenting the same. In paragraph 31 of the cross-examination election petitioner has stated that during the scrutiny of the nomination paper(s) for the impugned election, he was waiting in his vehicle in the Collectorate campus. In paragraph 32 of the cross-examination election petitioner has stated that at the time of scrutiny of the nomination paper, his proposer, Sri Prabhakar Prasad Singh

was present. In paragraph 33 of the cross-examination election petitioner has stated that at about 10.00 P.M., Sri Prabhakar Prasad Singh informed him that his nomination paper has been rejected. Prior thereto, he was not given any information about the rejection of nomination paper. In paragraph 34 of the cross-examination election petitioner has stated that he received the information about the rejection of his nomination paper in District Party Office. In paragraph 35 of the cross-examination election petitioner has stated that he was present in the Collectorate campus until 7.00 P.M. In paragraph 36 of the cross-examination election petitioner has stated that he has got mobile phone. In paragraph 37 of the cross-examination election petitioner has stated that on the date of scrutiny of nomination paper(s), mobile phone was available with him. In paragraph 38 of the cross-examination election petitioner has stated that in the Hand Book of the Candidates given by the Commission, there is no instruction for giving notice to the candidate about the defect in his nomination paper, provided the defect is found during the scrutiny of nomination paper. In paragraph 39 of the cross-examination election petitioner has stated that he has also seen the Hand Book for the Returning Officer. In paragraph 40 of the cross-examination election petitioner has stated that he does not recollect that there is any instruction in the Hand Book of the Returning Officer to give notice to the candidate during the scrutiny about the defect found in the nomination paper. In paragraph 41 of the cross-examination election petitioner has stated that there were 19 Candidates who filed nomination paper for contesting the impugned election including the election petitioner. In paragraph 42 of the cross-examination election petitioner has stated that he is not aware about the number of sets of nomination paper which the other Candidates had filed but he filed nomination paper in four sets. In paragraph 43 of the cross-examination election petitioner has stated that he was informed on his mobile phone on the date of scrutiny some time between 6.30 - 7.00 P.M. that the scrutiny of nomination paper is over. In paragraph 44 of the cross-examination election petitioner has stated that Form 26 filed by him in four sets of nomination paper does not contain the signature and seal of either a Magistrate or Notary Public. In paragraph 45 of the cross-examination election petitioner has stated that it is incorrect to suggest that the Returning Officer did not commit any mistake by rejecting his nomination paper on the ground that there was no signature and seal of a Magistrate or Notary Public over Form 26 filed by him. In paragraph 46 of the cross-examination election petitioner has stated that the Returning Officer never admitted in writing that he committed mistake in rejecting his nomination paper, although during argument on the basis of the petition dated 12-4-2009, Ext. 3, in presence lawyers of election petitioner on 12-4-2009, he verbally admitted that he committed mistake by rejecting his nomination paper. In paragraph 47 of the cross-examination election petitioner has stated that the three

Lawyers. before whom the Returning Officer admitted his mistake of rejecting the nomination paper of the election petitioner on 12-4-2009 have not been included in the list of witnesses filed by him in this Court. In paragraph 48 of the cross-examination election petitioner has stated that it is incorrect to suggest that he is deposing only with a view to strengthen his case in this Court. In paragraph 49 of the cross-examination election petitioner has admitted that in his election petition, he has not stated that the Returning Officer admitted before his three Lawyers on 12-4-2009 that he committed mistake in rejecting the nomination paper of the petitioner, but election petitioner has stated in the election petition that three Lawyers appeared on his behalf before the Returning Officer on 12-4-2009. In paragraph 50 of the cross-examination election petitioner has stated that on the date of scrutiny of the nomination paper i.e. 11-4-2009, the Returning Officer informed Lawyers of the petitioner that he shall again consider the matter tomorrow i.e. on 12-4-2009 and such fact was also disclosed by the Returning Officer to the election petitioner on his mobile phone on 12-4-2009 when election petitioner spoke to the Returning Officer on mobile. In paragraph 51 of the cross-examination election petitioner has stated that he has mentioned few of the aforesaid facts in his election petition and not the whole of it. In paragraph 52 of the cross-examination election petitioner has stated that it is incorrect to suggest that he is deposing falsely in this Court. In paragraph 53 of the cross-examination election petitioner has stated that he handed over application dated 12-4-2009 to the Returning Officer sometime in between 11.00 A.M. - 12.00 Noon. In paragraph 54 of the cross-examination election petitioner has stated that the endorsement made in the margin of the application dated 12.4.2009 that the same is being received by the Returning Officer at 7.30 P.M. is absolutely false, as the said application was filed in between 11.00 A.M. 12.00 Noon, but the said fact he has not stated in the election petition.

8. P. W. 2 Sri Prabhakar Prasad Singh stated in his examination in chief that he is a voter of 25 Khagaria Parliamentary Constituency and had proposed election petitioner as a candidate of Communist Party of India for contesting the impugned election. He further stated in his examination in chief that election petitioner filed his nomination paper on 6-4-2009 and at the time of presentation of the nomination paper P. W. 2 accompanied the election petitioner in the office of the Returning Officer. According to P. W. 2 the nomination paper was duly filled in and also supported by an affidavit affirmed before Notary Public. Form 26 was also enclosed with the nomination paper duly filled in and signed by the election petitioner. It is further stated in the examination in chief that no defect was pointed out by the Returning Officer and the check list to that effect was furnished by the Returning Officer to the election petitioner. P. W. 2 further stated that on the date of scrutiny on nomination paper he was authorized by the election

petitioner to attend the scrutiny on his behalf. According to P.W. 2 the scrutiny was conducted inside the court room of the Returning Officer-cum-District Magistrate, Khagaria located on the first floor of the Collectorate. It is also stated in the examination in chief by P. W. 2 that he remained present through out the scrutiny which began at about 11 A.M. and continued till late in the evening. Nothing was informed to P.W. 2 about the scrutiny of various nomination papers until about 5-6 O'clock, whereafter it was announced that nomination paper of all other candidates, excepting three candidates including the election petitioner has been accepted. On enquiry P. W. 2 was informed that there is some defect in the nomination paper of the three candidates including the election petitioner. The defect was, however, not clearly specified and P.W. 2 was asked to wait. According to P.W. 2 the scrutiny was conducted on the Izlas( court table) and the nomination papers were not visible to P. W. 2. Later in the evening P. W. 2 was informed that Form 26 filed by the election petitioner is not supported by an affidavit affirmed before Notary/Magistrate, P.W. 2 immediately requested the Returning Officer to allow removal of the defect, which was possible as the election petitioner was present in the Collectorate campus itself but such request was not accepted. P.W. 2 thereafter called Sri Prabha Shankar Singh, P.W. 3 on mobile and informed him about refusal of the Returning Officer to permit the election petitioner to remove defect in his nomination paper. P.W. 3 also came to the Collectorate with two Advocates, namely, Sri Durgesh Prasad Singh and Birendra Kumar Singh and they made submission before the Returning Officer but the Returning Officer did not accept the submission. Later in the night it came to the notice of P.W. 2 that nomination paper of the election petitioner has been illegally rejected and objection about such rejection was filed on the next date before the Returning Officer. In paragraph 1 of the cross-examination P. W. 2 has stated that he is not related to the election petitioner. In paragraph 2 of his cross-examination P.W. 2 has stated that he is the District Secretary of the Communist Party of India and proposed the election petitioner as candidate for the impugned election. In paragraph 3 of his cross-examination P. W. 2 has stated that he has contested local elections and for the present, is member of the Panchayat Samiti, Chautham block in the district of Khagaria. In paragraph 4 of his cross-examination P.W. 2 has stated that he is B.A.(Hons.). In paragraph 5 of his cross-examination P.W. 2 has stated that he understood the meaning of affidavit, which is the statement of the deponent sworn before the Magistrate or Notary. In paragraph 6 of his cross-examination P.W. 2 has stated that he had filed nomination paper for contesting the Panchayat Samiti Election, 2011. In paragraph 7 of his cross-examination P.W. 2 has stated that while filing nomination paper for contesting the Panchayat Samiti Election, he submitted the required affidavit. In paragraph 8 of his cross-examination P.W. 2 has stated that he had affirmed the affidavit before the Notary Public. In paragraph



9 of his cross-examination P. W. 2 has stated that he proposed the election petitioner for contesting the impugned Election but earlier he had not proposed any other candidate for contesting Parliamentary election. In paragraph 10 of his cross-examination P.W. 2 has stated that along with nomination paper the election petitioner had to file affidavit. In paragraph 11 of his cross-examination P. W. 2 has stated that he was present when the nomination paper of the election petitioner was filled up. In paragraph 12 of his cross-examination P. W. 2 has stated that election petitioner had filed the required affidavit along with nomination paper. In paragraph 13 of his cross-examination P. W. 2 has stated that along with nomination paper required number of affidavits were. filed but he does not remember the exact number of affidavit(s). In paragraph 14 of his cross-examination P.W. 2 has stated that he does not remember the number of affidavits which were filed by the election petitioner along with his nomination paper. In paragraph 15 of his cross-examination P.W. 2 has stated that he had signed the nomination paper of the election petitioner as his proposer and while putting his signature, he had seen the nomination paper. In paragraph 16 of his cross-examination P.W. 2 has stated that while putting his signature on the nomination paper of election petitioner, he had seen the same casually. In paragraph 17 of his cross-examination P.W. 2 has stated that he cannot give the details of the enclosures which were enclosed with the nomination paper. In paragraph 18 of his cross-examination P. W. 2 has stated that while putting his signature on the nomination paper of the election petitioner, he had overturned the pages of nomination paper and while overturning the pages, he saw that the affidavits were enclosed with the nomination paper. In paragraph 19 of his cross-examination P.W. 2 has stated that he is aware that he filed his examination in chief on affidavit in which he has stated that he read the contents of the examination in chief and statements made therein are correct. In paragraph 20 of his cross-examination P.W. 2 has stated that Form-26 filed along with nomination paper of the election petitioner was not supported by an affidavit. In paragraph 21 of his cross-examination P. W. 2 has stated that he accompanied the election-petitioner when he had gone to file his nomination paper. In paragraph 22 of his cross-examination P. W. 2 has stated that nomination paper was presented before the Returning Officer. In paragraph 23 of his cross-examination P. W.-2 has stated that the nomination paper of the election-petitioner was received by the Returning Officer. In paragraph 24 of his cross-examination P.W. 2 has stated that Sri Abhay Kumar Singh was the Returning Officer. In paragraph 25 of his cross-examination P.W. 2 has stated that before submitting his nomination paper, election petitioner had taken oath before the Returning Officer. In paragraph 26 of his cross-examination P.W. 2 has stated that the oath-form was also annexed with the nomination paper. In paragraph 27 of his cross-examination P.W.2 has stated that after oath, nomination paper was received and thereafter receipt and

check-slip was given without performing any other formality. In paragraph 28 of his cross-examination P.W. 2 has stated that at the time of receipt of the nomination paper, election petitioner was given three or four documents by the Returning Officer and he cannot give the details of those documents. In paragraph 29 of his cross-examination P.W. 2 has stated that on the date of scrutiny election petitioner was present in the Collectorate campus, but he had not gone to the court hall of the Collector where scrutiny was conducted. In paragraph 30 of his cross-examination P.W. 2 has stated that the scrutiny was being conducted in the court hall of the Collector which is by the side of his chamber on the first floor of the Collectorate building and the election petitioner was waiting in his vehicle in the Collectorate campus. In paragraph 31 of his cross-examination P. W. 2 has stated that the scrutiny of nomination papers commenced at about 11 A.M. and continued until 9 P.M. In paragraph 32 of his cross-examination P.W. 2 has stated that during the period between 11 A.M. to 9 P.M. while the scrutiny was conducted, he was present in the court hall and was sitting on the chair meant for the candidate or his representative. In paragraph 33 of his cross-examination P. W. 2 has stated that during the period of scrutiny, he was in the court hall of the Collector and the election petitioner was sitting in his vehicle as he suffered fracture. In paragraph 34 of his cross-examination P. W. 2 has stated that election petitioner has met with an accident in October, 2008 while he was travelling in his jeep which collided head on with a bus. In paragraph 35 of his cross-examination P.W. 2 has stated that on the date of presentation of the nomination paper, election petitioner with the help of his four proposers came to the first floor of Collectorate building and thereafter with the help of a walker walked into the court hall of the Collector for presenting the nomination paper to the Returning Officer but on the date of scrutiny he could not be carried to the first floor and the Izlas. Court Hall) of the Collector as only one person, either the candidate or the proposer was allowed to attend the scrutiny. In paragraph 36 of his cross-examination P.W. 2 has stated on the date of presentation election petitioner along with his four proposers had gone to the court hall of the Collector to submit his nomination paper to the Returning Officer. In the same paragraph he also stated that as per the direction of the Election Commission, candidate or his proposer was only allowed to be present at the time of scrutiny of the nomination paper. The witness volunteers that as the election petitioner had presented his nomination papers in four sets, four proposers along with the election petitioner were present at the time of presentation of the nomination paper. In paragraph 37 of his cross-examination P. W. 2 has stated that besides him, the three proposers of the election petitioner M/s. Ranjan Kumar Raj, Nand Kishore Yadav and Dange Prasad Singh were present at the time of presentation of the nomination paper. In paragraph 38 of his cross-examination P. W. 2 has stated that on the date of



scrutiny either the candidate or his proposer was allowed to be present at the time of scrutiny of the nomination paper. In paragraph 39 of his cross-examination P. W. 2 has stated that it is incorrect to suggest that aforesaid statement has been made by him only with a view to help the election petitioner. In paragraph 40 of his cross-examination P. W. 2 has stated that he does not remember the number of candidates who had filed their nomination paper to contest the impugned election. In paragraph 41 of his cross-examination P. W. 2 has stated that he does not remember the number of sets of nomination paper which were filed for contesting the impugned election. In paragraph 42 of his cross-examination P. W. 2 has stated that serial number of the nomination paper filed by the election petitioner was one. In the same paragraph he has stated that he does not recollect the serial number of the other three nomination papers of the petitioner. In paragraph 43 of his cross-examination P.W. 2 has stated that at the beginning of the scrutiny process the Returning Officer announced that he is going ahead with the scrutiny proceedings but he never informed the candidate or the proposer present in the Court-hall as to whose nomination paper is being scrutinized. In paragraph 44 of his cross-examination P.W. 2 has stated that no protest was lodged before the Returning Officer either by him or any other candidate or proposer about the aforesaid conduct of the Returning Officer. In paragraph 45 of his cross-examination P.W. 2 has stated that he did not ask the Returning Officer to make available for his perusal the nomination paper of any other candidate. In paragraph 46 of his cross-examination P.W. 2 has stated that no other candidate or proposer asked the Returning Officer to make available the nomination paper of any other candidate for his perusal. In paragraph 47 of his cross-examination P.W. 2 has stated that in the evening after 6 P.M. Returning Officer announced that three of the nomination papers have been found to be defective out of the total nomination papers received for contesting the impugned election which also included the nomination paper of election petitioner. In paragraph 48 of his cross-examination P.W. 2 has stated that before 6 P.M. the Returning Officer did not make any announcement about the validity of any nomination paper. In paragraph 49 of his cross-examination P. W. 2 has stated that no objection was taken by either the candidate or the proposer present during the scrutiny that announcement about the result of the consideration of the nomination be made no sooner the scrutiny of a nomination paper is over. In paragraph 50 of his cross-examination P.W. 2 has stated that after 6 P.M. the Returning Officer announced the result of the scrutiny proceeding by which time scrutiny of all the nomination paper stood completed. In paragraph 51 of his cross-examination P.W. 2 has stated that having learnt about the fact that the nomination paper of the election petitioner and two others have been found defective, he asked the Returning Officer about the nature of defect in the nomination paper of the election petitioner but Returning

Officer asked him to wait and began discussing the defect found in the other two nomination paper. In paragraph 52 of his cross-examination P.W. 2 has stated that he was told about the nature of the defect of the election petitioner at about 7 P.M. In paragraph 53 of his cross-examination P.W. 2 has stated that having learnt about the nature of defect in the nomination paper of the election petitioner, he requested the Returning Officer for granting him time so as to enable the election petitioner who is sitting in his vehicle in the Collectorate campus to remove the defect. In paragraph 54 of his cross-examination P.W. 2 has stated that he made verbal request for granting time for removal of defect by the election petitioner. In paragraph 55 of his cross-examination P.W. 2 has stated that the Returning Officer refused to grant time for removal of the defect by the election petitioner. In paragraph 56 of his cross-examination P.W. 2 has stated that he did not file any written application asking the Returning Officer to grant opportunity to the election petitioner to remove the defect. In the same paragraph he further stated that he came out of the Court-hall where he was given information about the defect in the nomination paper of the election petitioner and switched on his mobile which he was instructed to switch off while sitting in the court hall and informed the election petitioner who was sitting in his vehicle in the Collectorate campus as also to one another leader sitting in the C.P.I. Party office, Khagaria about the conduct of the Returning Officer i.e. his refusal to grant opportunity to remove the defect. In paragraph 57 of his cross-examination P.W. 2 has stated that on the date of scrutiny, no application was filed by the election petitioner seeking opportunity to remove the defect. In the same paragraph it is further stated that the written application for removal of defect was filed on the next day before the Returning Officer. In paragraph 58 of his cross-examination P.W. 2 has stated that the written application for removal of defect was addressed to the Returning Officer. In paragraph 59 of his cross-examination P.W. 2 has stated that he does not remember whether the election petitioner wrote in his application the manner in which Returning Officer refused to grant opportunity to remove the defect as also the manner in which he gave information to the election petitioner about refusal of the Returning Officer to grant opportunity to remove the defect in Form 26. In paragraph 60 of his cross-examination P.W. 2 has stated that on his information to the district leader sitting in the Khagaria District C.P.I. Office, the leader came to the office of the Returning Officer for removal of defect along with two senior advocates of Khagaria Bar. In paragraph 61 of his cross-examination P. W. 2 has stated that the two advocates who came along with the district leader were M/s. Durgesh Prasad Singh and Birendra Kumar Singh. In paragraph 62 of his cross-examination P.W. 2 has stated that he does not remember whether any of the two advocates was a Notary Public. In paragraph 63 of his cross-examination P. W. 2 has stated that out of the two, Sri Durgesh Prasad Singh is senior advocate but Sri Birendra

Prasad Singh is not as senior as Sri Durgesh Prasad Singh. In paragraph 64 of his cross-examination P. W. 2 has stated that he does not remember the contents of the application which the election petitioner filed on the next day of the scrutiny before the Returning Officer. In paragraph 65 of his cross-examination P.W. 2 has stated that it is not-correct to suggest that he had not made any request to the Returning Officer to grant opportunity for removal of defect by the election petitioner. It is further stated in the same paragraph that it is necessary to support Form-26 with an affidavit, the affidavit supporting Form 26 was filed by the election petitioner but the affidavit did not contain the seal and signature of the Notary Public and for removal of such defect, request was made. In paragraph 66 of his cross-examination P.W. 2 has stated that it is incorrect to suggest that his evidence is false.

9. Sri Prabha Shankar Singh, P.W. 3 in his examination in chief has stated that he is voter of 25 Khagaria Parliamentary Constituency and member of Communist Party of India holding post of Secretariat Member, District Council of Communist Party of India, District Khagaria as well as member of State Council of Communist Party of India, Bihar. He further states in his examination in chief that election petitioner was nominated as a candidate of Communist Party of India for the impugned election who filed his nomination paper on 6-4-2009 and he came to know that there was no defect in his nomination paper. The scrutiny was scheduled for 11-4-2009. It is also stated in the examination in chief of P.W. 3 that P.W. 2 who is the District Secretary of Communist Party of India, Khagaria proposed the candidature of the election petitioner and was authorized to attend the scrutiny proceedings conducted by the Returning Officer for the impugned election. It is also, stated in the examination in chief that P. W. 3 was informed by P.W. 2 on the date of scrutiny through mobile at about 6.30 P.M. that the nomination paper of election petitioner is not being accepted, the Returning Officer has kept the same pending. Aforesaid information was also given to the witness by the election petitioner who instructed him to come with Advocate. The witness immediately contacted Sri Durgesh Prasad Singh, Senior Advocate and Sri Birendra Kumar Singh, Advocate and along with them came to the party office and then with the election petitioner came to the Collectorate where scrutiny was being conducted and P.W. 2 was present. The witness further states that scrutiny was conducted inside the court room of Returning Officer-cum-District Magistrate located on the first floor of the Collectorate. It is also stated in the examination in chief that the election petitioner was unable to move without walker and he was not in a position to go to the first floor, hence he stayed in his vehicle. The witness met P.W. 2 and was informed that as the affidavit furnished in Form 26 by the election petitioner along with nomination paper did not contain the signature and seal of a Notary Public or Ist Class Magistrate it was being considered as

defective and was not being accepted and the defect was also not being allowed to be removed. Whereafter P. W. 3 and aforesaid Advocates along with P. W. 2 went inside the court room of the Returning Officer after taking permission and met the Returning Officer. It is also stated in the examination in chief that both the Advocates M/s. Durgesh Prasad Singh and Birendra Kumar Singh made their submissions before the Returning Officer that on the ground of defect in affidavit nomination paper should not be rejected as the defect can be allowed to be removed, which they are ready to rectify immediately but the Returning Officer did not accept the submission. The Advocates present thereafter requested the Returning Officer for hearing and on their request the Returning Officer granted time until 11 A.M. on the next day i.e. 12-4-2009. It is further stated in the examination in chief by P.W. 3 that on 12-4-2009 he along with election petitioner and three Advocates, namely, M/s. Ashok Narayan Verma, Chamak Lal Singh and Nalinesh Kumar and a few party workers went to the Collectorate and with support and help of those persons election petitioner came to the first floor of the Collectorate where the court room and Chamber of the Returning Officer is situate. Having come to the first floor election petitioner filed objection before the Returning Officer and the Returning Officer-cum-District Magistrate heard his objection petition and arguments of the aforesaid Advocates in his court room but did not accept the submission and said that he has already passed order. Whereafter the said objection was sent to the Commission through fax. P.W. 3 further stated on 9-5-2012 that he filed his examination in chief on affidavit, which is dated 8-5-2012 in which he referred to objection petition dated 12-4-2009 of the election petitioner which was not accepted by the Returning Officer and was sent through fax to the Commission. The objection petition dated 12-4-2009 filed by the election petitioner and the fax receipt by which the objection petition was sent to the Commission is contained in Annexure-4, which is marked as Ext.4. In paragraph 1 of his cross-examination P.W. 3 has stated that on 11-4-2009, he along with two Advocates had appeared before the Returning Officer to satisfy him about the objection raised in connection with the nomination paper of the election petitioner. In paragraph 2 of his cross-examination P. W. 3 has stated that he is a Graduate. In paragraph 3 of his cross-examination P.W. 3 has stated that he has read the contents of the affidavit containing his examination-in-chief. In paragraph 4 of his cross-examination P.W. 3 has stated that he could learn about the defect in the nomination paper of the election petitioner on 11-4-2009 at about 6.30 P.M. In paragraph 5 of his cross-examination P.W. 3 has stated that when he received the information about the defect in the nomination paper of the election petitioner, the election petitioner was not present. In paragraph 6 of his cross-examination P.W. 3 has stated that at the time of receipt of information from Sri Prabhakar Prasad Singh about the defect in the nomination paper of the election petitioner,

he was in his village Rahimpur and before he could speak about the defect in the nomination paper to the election petitioner, election petitioner himself spoke to him about the defect on mobile phone. In paragraph 7 of his cross-examination P.W. 3 has stated that he received telephonic information from the election petitioner within 5-10 minutes of having received telephonic information from Sri Prabhakar Prasad Singh. In paragraph 8 of his cross-examination P.W. 3 has stated that he is appearing as a witness for the first time. In paragraph 9 of his cross-examination P. W. 3 has stated that he has been reading in newspaper(s) that if anyone is found deposing falsely, he is prosecuted for giving false evidence. In paragraph 10 of his cross-examination P.W. 3 has stated that he is not aware about the deposition of the election petitioner, as such, he cannot comment about the correctness or otherwise of the statement made by the election petitioner in his evidence. In paragraph 11 of his cross-examination P.W. 3 has stated that his village Rahimpur is about 2 Kilometers away from the CPI Party Office Khagaria in paragraph 12 of his cross-examination P. W. 3 has stated that having learnt about the defects from Sri Prabhakar Prasad Singh and election petitioner, he came to the house of M/s Durgesh Prasad Singh and Birendra Kumar Singh, both Advocates. In paragraph 13 of his cross-examination P.W. 3 has stated that residence of Sri Durgesh Prasad Singh is in the same locality in which Collectorate Khagaria is situate, the distance between the two is about 300 yards and the residence of Sri Birendra Kumar Singh is about half kilometer away from Collectorate Khagaria. In paragraph 14 of his cross-examination P.W.3 has stated that he contacted Sri Durgesh Prasad Singh first and thereafter Sri Birendra Kumar Singh who was brought to the Collectorate with the help of a vehicle. In paragraph 15 of his cross-examination P.W. 3 has stated that by the time he contacted the Advocates, he was informed that the decision on the nomination paper of the election petitioner has been kept pending as there is defect in the nomination paper. In paragraph 16 of his cross-examination P. W. 3 has confirmed that he has stated the aforesaid facts in his examination-in-chief. In paragraph 17 of his cross-examination P.W. 3 has stated that objection petition dated 12-4-2009, Ext. 3 was drafted on 12-4-2009. In paragraph 18 of his cross-examination P.W. 3 has stated that before hearing on the defect raised in connection with the nomination paper of the election petitioner on 11-4-2009, no written application explaining the defect was filed by or on behalf of the election petitioner. In paragraph 19 of his cross-examination P. W. 3 has stated that while adjourning the hearing on the defect raised in connection with the nomination paper of the election petitioner on 11-4-2009 to 12-4-2009, the Returning Officer did not pass any written order, but verbally adjourned the proceeding to 12-4-2009. In paragraph 20 of his cross-examination P.W. 3 has stated that election petitioner in his objection dated 12-4-2009 has not stated that hearing on the defects found in his nomination paper

took place on 11-4-2009 and was adjourned to 12-4-2009. In paragraph 21 of his cross-examination P. W. 3 has stated that no formal notice for hearing on 12-4-2009 with respect to the defects in the nomination paper of the election petitioner was issued. In paragraph 22 of his cross-examination P.W. 3 has stated that hearing on the defects in the nomination paper of the election petitioner was held on 12-4-2009 between 11.00 A.M.—12.00 Noon. In paragraph 23 of his cross-examination P.W. 3 has stated that before hearing on 12-4-2009, written submission about the defects was also filed but the Returning Officer did not grant receipt, although his office made endorsement of receipt on the petition itself. In paragraph 24 of his cross-examination P. W. 3 has stated that he is unable to confirm from the election petitioner whether the case, as has been deposed by him and explained in cross-examination, is stated in the election petition. In paragraph 25 of his cross-examination P. W. 3 has stated that in his deposition, he has not stated anything which would not appear to be a fact, as video of the entire proceeding was taken, but he does not have any copy of the video cassette. In paragraph 26 of his cross-examination P.W. 3 has stated that he is not aware whether election petitioner made request to the High Court for calling the video cassette. In paragraph 27 of his cross-examination P.W. 3 has stated that election petitioner did inform him about the election petition challenging the impugned election. In paragraph 28 of his cross-examination P.W. 3 has stated that details of the election petition was not discussed with the election petitioner. In paragraph 29. of his cross-examination P. W. 3 has stated that after hearing on 12-4-2009 on the defects noticed in the nomination paper of the election petitioner, the Returning Officer only stated that he has already passed an order in the matter, as such, he is not going to reconsider the order and such fact has not been mentioned in the petition, which was filed before the Returning Officer on 12-4-2009 as the said petition was filed before the hearing commenced. In paragraph 30 of his cross-examination P.W. 3 having seen Ext.3, has stated that in the margin of the first page of Ext., there are two endorsement indicating 7.30 P.M, 5.20 P.M. In paragraph 31 of his cross-examination P. W. 3 has stated that it is incorrect to suggest that the election petitioner was never a serious candidate and he deliberately filed defective nomination paper. In paragraph 32 of his cross-examination P. W. 3 has stated that it is incorrect to suggest that he has deposed falsely by stating that hearing took place to consider the defects in the nomination paper of the election petitioner after 11-4-2009 to be precise on 12-4-2009.

10. P.W. 4 Sri Birendra Kumar Singh stated in his examination in chief dated 9-5-2012 that he is an Advocate practicing in Civil Court, Khagaria and voter of 25 Khagaria Parliamentary Constituency. Election petitioner was nominated as candidate of Communist Party of India for contesting the impugned election. On the date of scrutiny



of nomination papers for the impugned election P.W. 4 received call from P.W. 3 Prabha Shankar Singh at about 7 P.M. in the evening that there is some problem in acceptance of the nomination paper of the election petitioner and requested him to immediately come to the Communist Party of India office from where they shall go to the office of the Returning Officer for submitting arguments. P.W. 4 immediately came to the CPI party office located near his house where Senior Advocate Sri Durgesh Prasad Singh had also come. P.W. 4, Sri Durgesh Prasad Singh, election petitioner P.W. 1 and P.W. 3 and others rushed to the Collectorate where P.W. 2 was waiting from before. With permission of the Returning Officer P.W. 4. along with Sri Durgesh Prasad Singh, Senior Advocate and P.W. 3 went inside the hall where the scrutiny was held. It is also stated that P.W. 3 and others were briefed about the details as to why nomination paper of the election petitioner was not being accepted as the affidavit furnished by him in Form 26 filed along with nomination paper did not bear the seal and signature of the Notary Public or Magistrate of 1st Class, hence defective and not acceptable. According to P.W. 4 Sri Durgesh Prasad Singh, Senior Advocate and the witness made submission and arguments for about an hour and , tried to convince the Returning Officer that there was no defect in furnishing the affidavit in Form 26 as it is duly 'signed and presented by the election petitioner before the District Magistrate-cum-Returning Officer who is also a Magistrate of 1st Class and had power to administer oath. It is also stated in the examination in chief that if the Returning Officer considers Form 26 as defective, it is minor, clerical defect, which must be ignored and the nomination paper cannot be rejected on that ground. It is further stated in the examination in chief that P.W. 4 and others requested the District Magistrate-cum-Returning Officer to take instructions from the Commission on the issue but unfortunately the Returning Officer refused to do so, though in case of another candidate Sri Bharat Kumar Yadav who failed to mention the number of Constituency on his nomination paper the Returning Officer spoke to the Commission about the defect and accepted the nomination paper of Sri Bharat Kumar Yadav. In case of election petitioner Returning Officer, however, refused to speak to the Commission. It is also stated in the examination in chief that it was getting late and request was made for further hearing on the next day and having made such request the witness and others came back. In paragraph 1 of the cross-examination P.W. 4 has stated that Sri Prabha Shankar Singh P.W. 3 came to call him within 10 minutes of the mobile call given by him at 7:00 P.M. In paragraph 2 of the cross-examination P.W. 4 has stated that Sri Prabha Shankar Singh had come on a Bolero vehicle and along with him he went to CPI Party Office. In paragraph 3 of the cross-examination P. W. 4 has stated that Sri Durgesh Prasad Singh, Advocate was also in the same vehicle. In paragraph 4 of the cross-examination P.W. 4 has stated that he and others waited in the Party Office hardly for 2 - 3 minutes and came back to

the Collectorate, In paragraph 5 of the cross-examination P.W. 4 has stated that when they reached Collectorate, election petitioner also accompanied them in his vehicle and he remained seated in his vehicle while they had gone to the Returning Officer to explain the defect in the nomination paper of the election petitioner. In paragraph 6 of the cross-examination P.W. 4 has stated that when he and others entered the scrutiny premises they found that the Returning Officer was still in the court hall where he had conducted scrutiny process. In paragraph 7 of the cross-examination P. W. 4 has stated that he and Sri Durgesh Prasad Singh, argued before the Returning Officer about the so called defect in the nomination paper of the election petitioner. In paragraph 8 of the cross-examination P.W. 4 has stated that he and Sri Durgesh Prasad Singh had come to appear before the Returning Officer without any Vakalatnama from the election petitioner. In paragraph 9 of the cross-examination P. W. 4 has stated that no authority letter was issued by the election petitioner either in his favour or in favour of Sri Durgesh Prasad Singh to represent his case before the Returning Officer. In paragraph 10 of the cross-examination P. W. 4 has stated that they made submission with the oral permission of the Returning Officer, although, no written authority letter or vakalatnama was given to them by the election petitioner. In paragraph 11 of the cross-examination P.W. 4 has stated that by the time he, Durgesh Prasad Singh and Prabha Shankar Singh had come to the Returning Officer to argue on behalf of the election petitioner the consideration of nomination paper of the election petitioner was kept pending. In paragraph 12 of the cross-examination P. W. 4 has stated that after arguments were made by him and Sri Durgesh Prasad Singh, the Returning Officer did not pass any order. In paragraph 13 of the cross-examination P.W. 4 has stated that while they were arguing the matter before the Returning Officer on 11-4-2009, the Returning Officer himself volunteered that the matter is adjourned to 12-4-2009 as it is too late in the evening. In paragraph 14 of the cross-examination P.W. 4 has stated that it is absolutely incorrect and false to suggest that he has deposed falsely. In paragraph 15 of the cross-examination P.W. 4 has stated that after hearing was adjourned on 11-4-2009, he came down in the Collectorate premises and informed the election petitioner about the development which had taken place before the Returning Officer. In paragraph 16 of the cross-examination P. W. 4 has stated that he is not aware about the contents of the election petition but whatever actually transpired during hearing was disclosed to the election petitioner. In paragraph 17 of the cross-examination P. W. 4 has stated that affidavit is the statement of the deponent on oath made before the Magistrate of 1st Class or Notary Public. In paragraph 18 of the cross-examination P. W. 4 has stated that statement of the deponent even without signature and seal of the Magistrate or the Notary Public is an Affidavit. In paragraph 19 of the cross-examination P. W. 4 having seen the affidavit filed in support of the election



petition states that the affidavit, even without the seal and signature of the Oath Commissioner, would be an affidavit. In paragraph 20 of the cross-examination P. W. 4 having seen Paragraph-1 of Page No.3 of his Examination-in-Chief states that he had submitted before the Returning Officer that the defect pointed out in the nomination paper of the election petitioner that the same did not contain the seal and signature of the Magistrate/Notary was not a defect, even assuming the same to be a defect, the defect was a minor defect, which should be ignored. In paragraph 21 of the cross-examination P.W. 4 has stated that he has seen two separate list containing substantial and minor defects. In paragraph 22 of the cross-examination P.W. 4 has stated that he does not remember the list in which the defect regarding omission to obtain seal and signature of the Magistrate/Notary over the affidavit is included. In paragraph 23 of the cross-examination P.W. 4 has stated that Sri Durgesh Prasad Singh had argued before the Returning Officer with reference to a book that the defect pointed out in connection with the nomination paper of the election petitioner regarding omission to obtain seal and signature of the Magistrate/Notary over Form 26 was a minor defect. In paragraph 24 of the cross-examination P.W. 4 has stated that the book which was referred to by Sri Durgesh Prasad Singh was concerning election matters. In paragraph 25 of the cross-examination P.W. 4 has stated that he does not remember the name of the book. In paragraph 26 of the cross-examination P.W. 4 has stated that he is not aware of any hand-book for the Returning Officer. In paragraph 27 of the cross-examination P. W. 4 has stated that it is not a fact that hand-book for the Returning Officer contain instruction to reject the nomination paper of a candidate, which is bereft of seal and signature of the Magistrate/Notary over Form 26. In paragraph 28 of the cross-examination P.W. 4 has stated that while arguments in regard to the defect noticed in the nomination paper of the election petitioner was being made, reference was also made to the defect in the nomination paper of Bharat Kumar Yadav in regard to his omission to mention the number of Parliamentary Constituency in the nomination form and at the request of Sri Yadav Returning Officer sought guidance from the Commission but such request made on behalf of the election petitioner was rejected by the Returning Officer. In paragraph 29 of the cross-examination P. W. 4 has stated that the statement made in second paragraph at page-3 of his Examination-in-Chief is with regard to the events which took place on 11-4-2009. In paragraph 30 of the cross-examination P.W. 4 has stated that on 12-4-2009 he had not appeared before the Returning Officer, as such, he is not aware what was written in the representation which was filed before the Returning Officer on 12-4-2009. In paragraph 31 of the cross-examination P.W. 4 has stated that it is incorrect to say that no argument in regard to the defect noticed in the nomination paper of the election petitioner took place before the Returning Officer on 11-4-2009. In paragraph 32

of the cross-examination P.W. 4 has stated that it is incorrect to suggest that he has made incorrect statement about the argument having been made before the Returning Officer in regard to the defects noticed in the nomination paper of the election petitioner on 11-4-2009. In paragraph 33 of the cross-examination P.W. 4 has stated that he is aware about the arguments which took place on 11-4-2009 but not aware about the contents of petition which was filed on 12-04-2009 and the argument made in support thereof. In paragraph 34 of the cross-examination P. W. 4 has stated that it is incorrect to suggest that no hearing on the defects noticed in the nomination paper of the election petitioner took place on 11-4-2009 but he is not aware whether such fact has been mentioned in the representation which was filed by the election petitioner on 12-4-2009 and in the election petition.

11. Respondent no.4 has examined four witnesses to support the validity of the order rejecting the nomination paper of the election petitioner as according to respondent no.4 the contents of Form 26 filed by the election petitioner along with his nomination paper was not supported by an affidavit duly affirmed before a Magistrate of 1st Class or Notary Public his nomination paper was properly rejected as neither election petitioner nor his authorised representative present at the time of scrutiny of the nominations requested for grant of opportunity to remove the defect noticed in Form 26 by the Returning Officer.

12. R.W. 1 is Sone Lal Mehta who is proposer of respondent no.4 in one of the nomination paper filed by him to contest the impugned election. R.W. 1 states in his examination in chief that he accompanied respondent no.4 and was present in the Chamber of the Returning Officer while he was receiving nomination paper from the candidates. After receiving the nomination paper of respondent no.4 the Returning Officer handed over the nomination paper to the Assistants present in his Chamber to assist the Returning Officer in receiving the nomination paper. The Assistants present in the Chamber went through the nomination paper of respondent no.4 and the enclosures enclosed there with and when no defect was found in the nomination paper a check slip was issued by the Returning Officer indicating that no defect has been found in the nomination paper of respondent no.4. The Returning Officer further served on the respondent no.4 notice regarding receipt of nomination paper and intimation about the date of scrutiny which was scheduled on 11-4-2009. It is further stated in the examination in chief by R. W. 1 . that respondent no.4 authorised R.W. 1 to attend the process of scrutiny on behalf of respondent no.4 and that he went to attend the process of scrutiny on 11.4.2009 on behalf of respondent no.4. It is also stated in the examination in chief by R. W. 1 that he did not require any authorisation from respondent no.4 in writing because he was proposer of respondent no.4 and the proposers also has right to attend the process of scrutiny. R. W. 1 reached

the place of scrutiny at 10.45 A.M. and the Returning Officer took his seat in the scrutiny hall at about 11 A.M. where Returning Officer was assisted by the Assistant Returning Officer and the Assistants in the process of scrutiny. The scrutiny was being held in the court room of the District Magistrate, Khagaria. Further statement has been made in the examination in chief that the process of scrutiny commenced at about 11 A.M., the candidates and/or their authorised representative were provided opportunity to go through the nomination paper of other candidates. The scrutiny of nomination paper filed by the election petitioner was undertaken at about 8 P.M. when his representative Sri Prabhakar Prasad Singh was present at the place of scrutiny. The Returning Officer having taken up nomination paper of the election petitioner for scrutiny immediately informed Sri Prabhakar Prasad Singh, the representative of the election petitioner the defect in Form 26 filed by the election petitioner along with his nomination paper as Form 26 filed by the election petitioner is not supported by an affidavit required by law as there is neither seal nor signature of the Executive Magistrate 1st Class or the Notary Public or the Oath Commissioner on Form 26 and the nomination of the election petitioner is defective, which if not removed the nomination paper of the election petitioner would be rejected. It is also stated in the examination in chief of R. W. 1 that Sri Prabhakar Prasad Singh the authorised representative of the election petitioner did not say anything to the Returning Officer about the defect. It is also stated in the examination in chief that Sri Prabhakar Prasad Singh did not even ask for time from the Returning Officer so that the defects can be removed by getting the contents of Form 26 supported by an affidavit. It is also stated in the examination in chief that after hearing the observations of the Returning Officer Sri Prabhakar Prasad Singh left the place of scrutiny and thereafter neither Prabhakar Prasad Singh nor the election petitioner nor any representative on his behalf came before the Returning Officer for removal of defect and therefore the Returning Officer rejected the nomination paper of the election petitioner. It is also stated in the examination in chief that R. W. 1 remained present at the place of scrutiny till the process was over and left the place when nothing was required to be done by the Returning Officer so far process of scrutiny is concerned. It is also stated in the examination in chief that Sri Prabhakar Prasad Singh the authorised representative of the election petitioner had never demanded any time either for removal of the defect or for the purpose of hearing regarding the nature of defect found in the nomination paper of the election petitioner. It is also stated in the examination in chief of R. W. 1 that he had not filed any application before the Returning Officer asking for adjournment of the scrutiny process for any purpose whatsoever. In paragraph 1 of his cross-examination R. W. 1 has stated that he is member of Janta Dal United Party. In paragraph 2 of his cross-examination R. W. 1 has stated that he won election as a Ward Member

in 1984 Municipal Election. In paragraph 3 of his cross-examination R. W. 1 has stated that while filing his own nomination paper during 1984 Municipal Election he had also taken oath before the Sub-Divisional Officer. In paragraph 4 of his cross-examination R.W. 1 has stated that for the impugned election, he proposed Respondent No.4. In paragraph 5 of his cross-examination R.W. 1 has stated that Sri Dinesh Chandra Yadav filed his nomination paper in 4 sets on 7-4-2009 after 12 noon. In paragraph 6 of his cross-examination R. W. 1 has stated that he does not remember in which of the nomination paper filed by Respondent No.4 he was his proposer. In paragraph 7 of his cross-examination R. W. 1 has stated that he was also present at the time of filing of the nomination paper by Respondent No.4. In paragraph 8 of his cross-examination R.W. 1 has stated that respondent no. 4 had also taken oath before the Returning Officer after filing his nomination paper. In paragraph 9 of his cross-examination R. W. 1 has stated that all the candidates who filed nomination paper to contest election are required to take oath before the Returning Officer. In paragraph 10 of his cross-examination R. W. 1 has stated that the oath is taken at the time of filing of the nomination paper. In paragraph 11 of his cross-examination R.W. 1 has stated that while putting his signature as proposer of Respondent No. 4 he did not read the contents of his nomination paper. In paragraph 12 of his cross-examination R. W. 1 has stated that he does not remember the description of Annexure-1 which was appended with the nomination paper of Respondent No. 4. In paragraph 13 of his cross-examination R. W. 1 has stated that he does not remember the details of the contents of Form 26 filed by Respondent No.4. In paragraph 14 of his cross-examination R. W. 1 has stated that after filing of the nomination paper by Respondent No. 4 he was given check-slip by the officer who received the nomination paper. In paragraph 15 of his cross-examination R. W. 1 has stated that in the check-slip description of the documents filed by Respondent No.4 along with the nomination paper was indicated. It is also stated in the same paragraph that the check-slip did not contain any information about the defects in the nomination paper. In paragraph 16 of his cross-examination R. W. 1 has stated that he is not aware about those candidates who filed their nomination paper on 6.4.2009. In paragraph 17 of his cross-examination R.W. 1 has stated that he was also present at the time of scrutiny of the nomination paper of Respondent No.4. In paragraph 18 of his cross-examination R.W. 1 has stated that he does not remember the name of all the candidates, whose nomination paper was scrutinized on the date of scrutiny. In paragraph 19 of his cross-examination R. W. 1 has stated that he is not aware as to when the scrutiny of the nomination paper of other candidates was taken up. In paragraph 20, 27 of his cross-examination R.W. 1 has stated that he does not remember the exact time when the scrutiny of the nomination paper of other candidate(s) was completed. In

the same paragraph he states that scrutiny of nomination paper of election petitioner was taken up in the end and was completed at about 8 P.M. In paragraph 21 of his cross-examination R.W. 1 has stated that he had not seen the nomination paper of any of the candidates. In paragraph 22 of his cross-examination R.W. 1 has stated that he and the others who were present to watch the scrutiny proceedings were not shown the nomination paper of the candidates by the Returning Officer or his assistants. In paragraph 23 of his cross-examination R. W. 1 has stated that the scrutiny of the nomination paper of Respondent No.4 had begun at 11 A.M. and it continued for half an hour or little more and was accepted by 11.45 A.M. In paragraph 24 of his cross-examination R. W. 1 has stated that after the scrutiny of nomination paper of Respondent No.4 was over, he kept waiting in the Court-hall where the nomination paper was being scrutinized in order to know the result of the scrutiny of the nomination paper of the other candidates. In paragraph 25 of his cross-examination R. W. 1 has stated that no defect was pointed out in any other nomination paper except nomination paper of the election petitioner. In paragraph 26 of his cross-examination R. W. 1 has stated that he does not remember the time on which the scrutiny of the nomination paper of Sri Bharat Kumar Yadav was taken up. In paragraph 28 of his cross-examination R.W. 1 has stated that he had not seen the nomination paper of the election petitioner. In paragraph 29 of his cross-examination R. W. 1 has stated that as he had not seen the nomination paper of election petitioner, he is not aware which of the documents he annexed with the nomination paper. In paragraph 30 of his cross-examination R. W. 1 has stated that he left the place of scrutiny after the Returning Officer left the place of scrutiny. In paragraphs 31, 32, 33 of his cross-examination R.W. 1 has stated that Sri Prabhakar Prasad Singh, P.W. 2 who is leader of the Communist Party of India and had come to watch the scrutiny proceeding at about 12 Noon and remained there until scrutiny proceeding continued. In paragraph 34 of his cross-examination R. W. 1 has stated that statements about the antecedents of the candidate made in Form 26 is required to be supported by an affidavit. In paragraph 35, 36, 37 of his cross-examination R.W. 1 has stated that he is not aware as to whether Form 26 is printed in English or Hindi as also the contents of the different columns including the fact whether it contains the designation and description of the authorities before whom the affidavit is to be affirmed. In paragraph 38 of his cross-examination R. W. 1 has stated that he is not aware whether the antecedent of the candidate is also included in Annexure-I appended with the nomination paper. In paragraph 39 of his cross-examination R.W. 1 has stated that he does not recall whether he had become propose of any other candidate earlier. In paragraph 40 of his cross-examination R.W. 1 has stated that besides him there were three proposers of respondent no.4, namely, M/s. Kanchan Patel, Arun Kumar

Yadav and Jitendra Prasad Singh. In paragraph 41 of his cross-examination R.W. 1 has stated that besides him Sri Kanchan Patel, the other proposer of respondent no.4 was also present during the scrutiny proceeding. In paragraph 42 of his cross-examination R.W. 1 has stated that he is not aware about the restriction imposed by the Returning Officer on the number of proposers attending the scrutiny proceeding for the candidate, as along with him, Sri Kanchan Patal, the other proposer of respondent no.4 was also present. In paragraph 43 of his cross-examination R.W. 1 has stated that he had come to attend the scrutiny proceeding without obtaining any pass or authorisation. In paragraph 44 of his cross-examination R.W. 1 has stated that respondent no.4 was not present during the scrutiny of his nomination paper. In paragraph 45 of his cross-examination R. W. 1 has stated that it is incorrect to suggest that after the scrutiny of the nomination paper of a particular candidate was over, the representative of that candidate was asked to leave the scrutiny hall. In paragraph 46 of his cross-examination R. W. 1 has stated that he knew Sri Birendra Kumar Singh, Advocate Khagaria. In paragraph 47 of his cross-examination R. W. 1 has stated that on the date of scrutiny, Sri Birendra Kumar Singh Advocate had not come to the scrutiny hall, but Sri Prabha Shankar Singh and Sri Prabhakar Prasad Singh being the same person was present from before. In paragraph 48 of his cross-examination R. W. 1 has stated that on the date of scrutiny, Sri Prabha Shankar Singh, resident of Pachkuti, Rahimpur was present in the scrutiny hall, but Sri Prabhakar Prasad Singh, son of late Badra Narayan Singh of village Malpa was not present in the scrutiny hall, though I recognise only one of the two i.e. Sri Prabha Shankar Singh of Pachkuti, Rahimpur. In paragraph 49 of his cross-examination R.W. 1 has stated that he does not recognise Sri Prabhakar Prasad Singh of village Malpa. In paragraph 50 of his cross-examination R.W. 1 has stated that it is true that if he does not recognise Sri Prabhakar Prasad Singh of village Malpa, he cannot say. whether he was present in the scrutiny hall during the scrutiny proceeding. In paragraph 51 of his cross-examination R.W. 1 has stated that suggestion that M/s Prabhakar Prasad Singh, Prabha Shankar Singh and Birendra Kumar Singh had come to the scrutiny hall on the date of scrutiny proceeding for removing the defects noticed in the nomination paper of the election petitioner is wholly incorrect, as no such attempt or request for removing the defects was ever made by the persons named above on the date of scrutiny. In paragraph 52 of his cross-examination R.W. 1 has stated that suggestion that the Retuning Officer admitted during the scrutiny proceeding before M/s Prabhakar Prasad Singh, Prabha Shankar Singh and Birendra Kumar Singh that he had committed mistake in rejecting the nomination paper of the election petitioner is incorrect, as after the defect was pointed out by the Returning Officer in the nomination paper of the election petitioner, Sri Prabha Shankar Singh of village Rahimpur stated before the



Returning Officer that as the defects are there, he may pass appropriate order. In paragraph 53 of his cross-examination R.W. 1 has stated that it is absolutely incorrect to suggest that Sri Prabha Shankar Singh of village Rahimpur requested the Returning Officer to grant him opportunity to remove the defects. In paragraph 54 of his cross-examination R. W. 1 has stated that it is incorrect to suggest that he left the scrutiny hall after the scrutiny of nomination paper of respondent no.4 was over, as he continued to remain in the scrutiny hall until the scrutiny proceeding of others continued.

13. R.W. 2 Kanchan Patel stated in his examination in chief that he was proposer of respondent no.4 in one of the four sets of nomination paper, which he filed to contest the impugned election. He has further stated that when respondent no.4 filed his nomination paper before the Returning Officer he also accompanied respondent no.4 and was present in the Chamber of Returning Officer where he received nomination paper of candidates. R. W. 2 further stated in his examination in chief that after receipt of nomination paper of respondent no.4 Returning Officer passed it to the Assistants present in his Chamber to assist the Returning Officer. The Assistants went through the nomination paper of respondent no.4 together with the enclosures appended therewith and as no defect was found in the nomination paper a check slip was issued by the Returning Officer indicating that no defect is found in the nomination paper of respondent no.4. It is also stated in the examination in chief by R.W. 2 that the Returning Officer had also given a notice to respondent no.4 regarding receipt of the nomination paper and the date of its scrutiny, which was scheduled for 11-4-2009. It is further stated in the examination in chief by R.W. 2 that respondent no.4 authorised him to attend the process of scrutiny on his behalf and therefore he went to attend the process of scrutiny of nomination paper on 11-4-2009 on behalf of respondent no.4. He also stated that he did not require any authorisation by respondent no.4 in writing because he was proposer of respondent no.4 and the proposer also have right to attend the scrutiny proceeding. It is further stated by R. W. 2 in his examination in chief that he reached the place of scrutiny at about 10.45 A.M. and the Returning Officer took his seat at about 11 A.M. The Returning Officer was being assisted in the scrutiny of nomination paper by the Assistant Returning Officer and the Assistants. Scrutiny was conducted in the court room of the District Magistrate. The process of scrutiny was taken up at 11 A.M., the candidate and/or their authorised representative were provided opportunity to go through the nomination paper of other candidates. The scrutiny of nomination paper filed by the election petitioner was undertaken at about 8 P.M. when his representative Prabhakar Prasad Singh was present at the place of scrutiny. The Returning Officer immediately after he had taken up the nomination paper of the election petitioner for scrutiny informed Sri Prabhakar Prasad Singh the

representative of the election petitioner about the defect in Form 26 filed by the election petitioner along with his nomination paper. The Returning Officer informed Sri Prabhakar Prasad Singh that Form 26 is not supported by an affidavit, as is required by law as there is neither seal nor signature of the Magistrate of Ist Class or Notary Public or Oath Commissioner appointed by the High Court on Form 26 filed by the election petitioner is available and thus the nomination paper of the election petitioner is defective and liable to be rejected. Prabhakar Prasad Singh the authorised representative of the election petitioner did not say anything to the Returning Officer about the defect. He did not even ask for time from the Returning Officer so that the defects can be removed by getting Form 26 supported by an affidavit. After having heard the observations of the Returning Officer Sri Prabhakar Prasad Singh left the place of scrutiny and thereafter neither Prabhakar Prasad Singh nor the election petitioner nor any representative on behalf of the election petitioner came before, the Returning Officer for removal of the defects and therefore, the Returning Officer rejected the nomination paper of the election petitioner. It is also stated in the examination in chief that R. W. 2 remained present at the place of scrutiny till the process of scrutiny continued and left the place of scrutiny when nothing was required to be done by the Returning Officer for completing the process of scrutiny. It is further stated in the examination in chief by R. W. 2 that Prabhakar Prasad Singh the authorised representative of the election petitioner had never demanded any time either for removal of the defects or for the purpose of hearing regarding the nature of defect found in the nomination paper of the election petitioner. It is also stated that P.W. 2 did not file any application before the Returning Officer asking for adjournment of the scrutiny proceeding or for any other purpose whatsoever. In paragraph 1, 2 of the cross-examination R.W. 2 stated that he is an agriculturist and came to Patna yesterday. In paragraph 3 of the cross-examination R. W. 2 stated that he has not met Sri Sone Lal Mehta. In paragraph 4 of the cross-examination R. W. 2 stated that he is staying in the MLA flat of Sri Surendra Mehta, BJP MLA. In paragraph 5 of the cross-examination R.W. 2 stated that he is Member of the BJP State Executive Committee. In paragraphs 6 to 9 and 11 to 15 of the cross-examination R. W. 2 stated that in the impugned election he was one of the proposer of respondent no.4 and filed his nomination paper on 7-4-2009 and he had gone with respondent no.4 to file the nomination paper which was presented by respondent no.4 before the Returning Officer and he also signed and took oath before him but he did not go through the contents of nomination paper of respondent no.4 including Annexure-1, Form 26 after presentation of nomination paper the same was checked by Receiving Officer. After checking of the nomination paper check slip was given to the candidate who presented nomination paper. In paragraph 10 of the cross-examination R. W. 2 stated that



he is not aware whether other candidates also signed and took oath before the Returning Officer while submitting their nomination paper. In paragraph 16 of the cross-examination R. W. 2 stated that on 11-4-2009, the date of scrutiny, he had gone to the place of scrutiny at 11.30 A.M. In paragraphs 17 to 19 of the cross-examination R. W. 2 stated that he is not aware about the number of persons present during the scrutiny as also the name of candidates who were themselves present during the scrutiny proceeding together with the name of their proposers. In paragraph 20 of the cross-examination R. W. 2 has stated that he does not recollect the time when the scrutiny of the nomination paper of any other candidate was taken up and scrutiny completed. In paragraph 21 of the cross-examination R.W. 2 has stated that he does not recollect the nature of the defects as also the candidate other than the election petitioner in whose nomination paper defect was pointed out by the Returning Officer during the scrutiny proceeding. In paragraph 22 of the cross-examination R.W. 2 has stated that he does not recollect even the number of candidates, who filed nomination paper. In paragraphs 23 to 25 of the cross-examination R. W. 2 has stated that he does not remember whether he was given any pass or authority letter for being present in the scrutiny proceeding including the fact whether he signed any attendance register in token of having attended the scrutiny proceeding. In paragraph 26 of the cross-examination R.W. 2 has stated that he does not recognize Sri Birendra Kumar Singh, Advocate, Khagaria. In paragraph 27 of the cross-examination R.W. 2 has stated that Scrutiny of the nomination paper of the Returned Candidate was over at about 11.45 A.M., but even thereafter he remained present in the Hall where scrutiny of the nomination paper of other candidates continued. In paragraph 28, 29 of the cross-examination R. W. 2 has stated that he came out of the Court Hall where the scrutiny proceeding was going on at about 9.00 P.M. and straightway came to his residence without giving information about the result of the scrutiny proceeding to anyone. In paragraph 30 of the cross-examination R. W. 2 has stated that he did not visit the office of the Returning Officer the following day on which scrutiny was conducted. In paragraph 31 of the cross-examination R.W. 2 has stated that he is not aware about the proceedings conducted in the office of the Returning Officer on the following day of the date of scrutiny. In paragraph 32 of the cross-examination R.W. 2 has stated that the following day, he could learn from others about the rejection of the nomination paper of the election petitioner. In paragraph 33 of the cross-examination R. W. 2 has stated that it is incorrect to suggest that he had not gone to the office of the Returning Officer on the date of scrutiny and that he has deposed falsely in these proceedings. In paragraph 34 of the cross-examination R.W. 2 has stated that it is also incorrect to suggest that he has come here to depose falsely at the instance of the Returned Candidate. In

response to the question posed by this Court as to when witness could learn about the rejection of the nomination paper of the election petitioner the witness stated in paragraph 35 of his cross-examination that having come out of the hall where the scrutiny proceeding was being conducted by the Returning Officer he learnt that the nomination paper of the election petitioner has been rejected.

14. Besides the two proposers of respondent no.4 who were examined as R.W. 1 and 2 the Returning Officer and Assistant Returning Officer who conducted the impugned election were also examined as R.W. 3 and 4. R.W. 3 in his examination in chief has stated that he was Returning Officer for the impugned election as at the relevant time when the impugned election was announced he was posted as the District Magistrate, Khagaria and in the capacity of District Magistrate, Khagaria he was appointed Returning Officer for the impugned election. In paragraph 2 of the examination in chief R. W. 3 has stated that election petitioner filed his nomination paper in four sets before him on 6-4-2009 and at the time of presentation of his nomination paper the preliminary examination in terms of Sub-Section (4) of Section 33 of the Act was done by the Assistant Returning Officer and the Assistants posted to assist the Returning Officer for receiving the nomination paper for the impugned election. In paragraph 3 of the examination in chief R.W. 3 has stated that after going through the nomination paper filed by the election petitioner it transpired that the petitioner attached Form 26 and Annexure-I affidavit in the format prescribed by the Commission by its order no.3/EC/2003/JS-II dated 27-3-2003 duly sworn in before the competent authority. Form 26 filed by the petitioner was duly filled in but was not supported by affidavit affirmed before the Notary Public or Oath Commissioner or before 1st Class Magistrate as required under the instruction of the Commission. R.W. 3 further stated that petitioner also admitted the mistake through petition dated 12-4-2009 that Form 26 filed by the petitioner was not duly sworn before the competent authority. In paragraph 4 of the examination in chief R. W. 3 has stated that under Chapter VI paragraph 9.6 failure to support Form 26 by an affidavit has been mentioned as a defect of substantial nature and entail rejection of the nomination paper on the said ground. In the same paragraph R. W. 3 further stated that the Commission clearly instructs "non-furnishing of the affidavit by candidate shall be considered to be a violation of the order of the Hon'ble Supreme Court and the nomination paper of the candidate concerned shall be liable to rejection by Returning Officer at the time of scrutiny of nomination paper for such non-furnishing of the affidavit". In paragraph 5 of the examination in chief R. W. 3 has stated that according to the instructions contained in the Handbook the defect in the nomination paper of the petitioner was of substantial nature and no attempt was

made by representative (Prabhakar Prasad Singh) to represent his case nor any request was made by him for any adjournment of hearing or to postpone the process of scrutiny of the nomination paper, though the process of scrutiny continued up to 9 P.M. KW. 3 was left with no option but to reject the nomination papers of the election petitioner, which was done by passing reasoned order in accordance with legal provisions. In paragraph 1 of the cross-examination R.W. 3 has stated that in April, 2009, he was District Magistrate, Khagaria and in such capacity he was appointed Returning Officer for conducting election to 25, Khagaria Parliamentary Constituency. In paragraph 2 of the cross-examination R.W. 3 has stated that he was Returning Officer for only 25, Khagaria Parliamentary Constituency. In paragraph 3 of the cross-examination R.W. 3 has stated that notification for conducting the impugned election was issued on 02-04-2009. In paragraph 4 of the cross-examination R.W. 3 has stated that any candidate who desired to contest the impugned election had opportunity to file nomination paper between 02-04-2009—09-04-2009. In paragraph 5 of the cross-examination R.W. 3 has stated that the scrutiny of the nomination paper filed for contesting the impugned election was fixed for 11-04-2009, which was also conducted on that date. In paragraph of the cross-examination R.W. 3 has stated that 20 candidates filed nomination paper for contesting the impugned election. In paragraphs 7, 38, 42 of the cross-examination R.W. 3 has stated that election petitioner filed his nomination paper on 06-04-2009 in four sets which has been shown to him and is marked as Exts. 8, 8/1, 8/2, 8/3. In paragraph 8 of the cross-examination R.W. 3 has stated that after scrutiny of the nomination paper, 19 out of 20 candidates were allowed to contest the impugned election, but one of the 19 candidates withdrew his nomination paper on the date of withdrawal i.e. 13.04.2009. In paragraph 9 of the cross-examination R.W. 3 has stated that nomination paper of the election petitioner was only rejected. In paragraph 10 of the cross-examination R.W. 3 has stated that as Probationer, he witnessed Panchayat election and as Sub-Divisional Officer, conducted Municipal election and when he was posted as District Magistrate, Khagaria he conducted the impugned election as Returning Officer. In paragraph 11 of the cross-examination R.W. 3 has stated that he went through the guidelines issued by the Commission for conducting 2009 Parliamentary Election. In paragraph 12 of the cross-examination R.W. 3 has stated that seven Assistant Returning Officers were appointed by the Commission to assist him in conducting the impugned election. In the same paragraph the witness has clarified that six out of the seven Assistant Returning Officers were appointed to assist him in the six Assembly Constituency and the seventh Assistant Returning Officer was appointed to assist him in receiving the nomination paper. In paragraph 13 of the cross-examination R.W. 3 has stated that Sri Shyamal Kishore Pathak, Director, District Rural

Development Agency, Khagaria was appointed as Assistant Returning Officer for assisting him in connection with receipt of the nomination paper. In paragraph 14 of the cross-examination R.W. 3 has stated that Sri Pathak did assist him in receiving the nomination paper during the period between 02-04-2009—09-04-2009. In paragraph 15 of the cross-examination R.W. 3 has stated that on the date of scrutiny of the nomination paper i.e. 11-04-2009, Only Sri Shyamal Kishore Pathak, Assistant Returning Officer assisted him in scrutiny of the nomination papers. In paragraphs 16, 21 of the cross-examination R.W. 3 has stated that the candidate filing nomination paper, presented his nomination paper to the Assistant Returning Officer, who went through the nomination paper and if necessary document(s) was found not annexed with the nomination paper then a check slip indicating the missing Document was issued to the candidate. In paragraph 17 of the cross-examination R.W. 3 has stated that after issue of the check slip, in case the candidate was present for submitting his nomination paper, he was administered oath by him but if the candidate was in custody, the candidate had to take oath before the Jail Superintendent, who had to communicate that the candidate in custody had taken oath before him before last date and time fixed for filing nomination paper. In paragraph 18 of the cross-examination R.W. 3 has stated that during the impugned election, one candidate, namely, Sri Sanjay Yadav was in custody, who took oath before the Jail Superintendent, which fact was communicated to him by the Jail Superintendent before last date and time fixed for filing nomination paper. In paragraphs 19, 20 of the cross-examination R.W. 3 has stated that he administered oath after ensuring the identification and verification of the signature of the Candidate. In paragraphs 22 to 24 of the cross-examination R.W. 3 has stated that the check list concerning nomination, which is shown to him, is the same check list which he and his subordinates prepared for office purposes after examining the nomination paper of the election petitioner, which contains his signature as also the signature of the Deputy Election Officer and Police Officer designated to remain present at the time of nomination and Senior Incharge Officer i.e. Assistant Returning Officer, which is marked as Ext. 5. In paragraphs 25 and 26 of the cross-examination R.W. 3 has stated that the check list for handing over to the candidate who filed his nomination paper is prepared in two copies and the check list which is shown to him is check list which was prepared for handing over to the election petitioner and is marked as Ext. 6. In paragraph 27 of the cross-examination R.W. 3 having seen Column No.7 of Ext.5, stated that answer to the question posed in the said column has been answered in affirmative. In paragraph 28 of the cross-examination R.W. 3 having seen column no. 1 of Ext. 6 has stated that answer to the question posed in the said column with regard to affidavit in Form 26 is also answered in affirmative. In paragraph 29 of the cross-examination

R.W. 3 having seen Part 4 of the nomination paper has stated that the same is acknowledgement of the fact that election petitioner filed his nomination paper on 6.4.2009 at 1.25 P.M. which was numbered as 1. Part 4 of the nomination form was marked as Ext.7. In paragraph 30 of the cross-examination R.W. 3 has stated that he does not remember whether specific notice was given to the Candidate or his representative who presented the nomination paper to appear for scrutiny on the date fixed. In paragraph 31 of the cross-examination R.W. 3 has stated that he allowed the Candidate and his three representatives to remain present during the scrutiny of the nomination paper. In paragraph 32 of the cross-examination R. W. 3 has stated that he does not remember whether passes were issued for the Candidate and other three representatives to be present at the time of scrutiny. In paragraph 33 of the cross-examination R. W. 3 having seen the instruction of the Commission in Chapter VI paragraph 3.1 has stated that during the scrutiny, Candidate, his election agent, one of his proposers and a person duly authorized by the Candidate were allowed to be present at the time of scrutiny. In paragraph 34 of the cross-examination R.W. 3 has stated that out of the four persons referred to in paragraph 33 above who could be present at the time of scrutiny, there could be only one proposer and no other proposer could come to the Scrutiny Hall without the authorization by the Candidate. In paragraph 35 of the cross-examination R. W. 3 has stated that the authorization for other person to be present at the time of scrutiny must be in writing by the Candidate. In paragraph 36 of the cross-examination R.W. 3 has stated that he does not remember whether any prescribed format was there for the Candidate to authorize the entry of the other person during the scrutiny. In paragraph 37 of the cross-examination R.W. 3 has stated that he does not remember whether Respondent no.4 had authorized any other person to be present at the time of scrutiny of his nomination paper. In paragraph 39 of the cross-examination R.W. 3 has stated that so far he remember, election petitioner had filed his nomination paper along with Form 26. In paragraphs 40, 41, 47 of the cross-examination R.W. 3 having seen Form 26 filed by the election petitioner has stated that Form 26 was filled up and signed by the election petitioner, which is already marked as Ext. A at the instance of respondent no. 4. In paragraph 43 of the cross-examination R.W. 3 has stated that the signature on the Oath Form as also Form 26 appended with the nomination paper of the election petitioner is of the same person i.e. of the election petitioner which was presented by the election petitioner in person before him on 6-4-2009. In paragraph 44 of the cross-examination R. W. 3 having seen the Oath Form, P. W. 3 stated that he administered oath to the election petitioner on 6-4-2009 at 2.20 P.M. and having administered oath, in token thereof obtained the signature of the election petitioner as also put his signature over the same. In paragraph 45 of the cross-examination R. W. 3 has stated

that while serving as District Magistrate, he also discharged the duties of an Executive Magistrate and in such capacity, he has the authority to administer oath, but not in the capacity of Returning Officer. In paragraph 46 of the cross-examination R. W. 3 has stated that at the time of preliminary examination of the nomination paper, he only saw whether the nomination paper is accompanied by the documents which are required to be annexed with the nomination paper. In paragraph 48 of the cross-examination R.W. 3 has stated that at the time of preliminary examination of the nomination paper, he had to see whether the nomination paper is accompanied by all the annexures and having seen the nomination paper filed by the election petitioner, he was satisfied that the nomination paper was accompanied by all the documents including Form 26. In paragraph 49 of the cross-examination R.W. 3 has stated that Form 26 is required to be sworn in before the Notary Public, Oath Commissioner or First Class Magistrate. In paragraph 50 of the cross-examination R. W. 3 has stated that at the time of preliminary examination of the nomination paper filed by the election petitioner, only Form 26 was there but without the affidavit sworn in before the competent authority. In paragraph 51 of the cross-examination R. W. 3 having seen paragraph 19.1 of Chapter (V) of the Hand Book issued for the impugned election stated that in case Form 26 is not annexed with the nomination paper then the Returning Officer after preliminary examination of the nomination paper is required to give written notice in prescribed form to the Candidate that the nomination paper is not accompanied with Form 26, but if the affidavit supporting Form 26 is not available then such information is not required to be given to the Candidate. In paragraph 52 of the cross-examination R.W. 3 has stated that notice under Clause 19.1 of Chapter (V) of the Hand Book is required to be given to the Candidate only when the Candidate has not filed Form 26 along with the nomination paper. In paragraph 53 of the cross-examination R.W. 3 has stated that he did not give any notice to the election petitioner stating that Form 26 filed by him along with nomination paper is defective as the same has not been supported by an affidavit. In paragraph 54 of the cross-examination R.W. 3 has stated that neither notice nor intimation was given to the election petitioner with regard to his failure to support Form 26 with an affidavit. In paragraph 55 of the cross-examination R. W. 3 has stated that Annexure-I affidavit was filed by the election petitioner along with his nomination paper. In paragraph 56 of the cross-examination R.W. 3 has stated that having received the nomination paper and made preliminary examination of the nomination paper check list is issued to the Candidate and the nomination paper is kept separately under lock and key whereafter there is no occasion to discover any defect. In paragraph 57 of the cross-examination R. W. 3 has stated that defect in the nomination paper discovered at the time of scrutiny can be allowed to be corrected provided the same is permissible under the



Act and the guidelines of the Commission. In paragraph 58 of the cross-examination R. W. 3 has stated that defects in the nomination paper in regard to the affidavit including affidavit supporting Form 26 can be permitted to be filed until 3.00 P.M. of the last date for filing the nomination paper and not thereafter. In paragraph 59 of the cross-examination R.W. 3 has stated that swearing of affidavit supporting Form 26 cannot be allowed on the date of scrutiny of the nomination paper. In paragraph 60 of the cross-examination R.W. 3 has stated that during scrutiny he could not notice any defect in the nomination paper of other Candidates which could not be removed by the Candidate on the date of scrutiny. In paragraph 61 of the cross-examination R. W. 3 has stated that scrutiny of the nomination paper received in connection with impugned election began at 11.00 A.M. on 11.4.2009 in the Court Hall of the Collector, Khagaria and continued until 9.00 P.M. of that day. In paragraph 62 of the cross-examination R. W. 3 has stated that scrutiny of the nomination paper of the election petitioner had begun at about 7.00 - 7.30 P.M. and concluded at 9.00 P.M. In paragraph 63 of the cross-examination R.W. 3 has stated that he does not remember the exact time when the scrutiny of the nomination paper of the Returned Candidate had begun and concluded. In paragraph 64 of the cross-examination R. W. 3 has stated that he does not remember the exact time of scrutiny of the nomination paper of any other Candidate also but the sequence in which scrutiny of the different nomination papers received for the impugned election was done is noted in the order sheet. In paragraph 65 of the cross-examination R.W. 3 has stated that four candidates filed single nomination paper. In paragraph 66 of the cross-examination R.W. 3 has stated that scrutiny of the nomination paper of the Candidate who filed the same in four sets took 20-30 minutes and scrutiny of the nomination paper of the Candidate who filed single nomination was completed within 5-7 minutes. In other cases, it may take even longer time as the Elector Roll number of the proposers of the respective Candidate is to be verified. In the case of Independent Candidate there are 10 proposers and in the case of the Candidate of recognized party, there is one proposer. In paragraph 67 of the cross-examination R.W. 3 has stated that the exercise of scrutiny had begun with the scrutiny of nomination paper of Returned Candidate, which commenced at 11.00 A.M. and concluded perhaps by 11.30 A.M. In paragraph 68 of the cross-examination R.W. 3 has stated that during scrutiny, besides him, designated Assistant Returning Officer and Deputy Election Officer were also present. In paragraph 69 of the cross-examination R.W. 3 has stated that the scrutiny of the nomination paper of the election petitioner was conducted at the last. In paragraph 70 of the cross-examination R. W. 3 has stated that after scrutiny of the nomination paper of a particular Candidate, that particular Candidate and his representative could have remained in the Hall or left the hall he has no idea as few of the

candidate/representative continued in the Hall until 9.00 P.M., but others left in the meantime. In paragraph 71 of the cross-examination R. W. 3 has stated that during the process of scrutiny no written objection was raised by any Candidate or his representative. In paragraph 72 of the cross-examination R. W. 3 has stated that during the scrutiny representative of the election petitioner was present. In paragraph 73 of the cross-examination R.W. 3 has stated that no written objection regarding the nomination paper of the election petitioner was raised by any Candidate or his representative. In paragraph 74 of the cross-examination R. W. 3 has stated that on the date of scrutiny before taking up scrutiny, he had no occasion to make announcement about the affidavit in Annexure-I or Form 26. In paragraph 75 of the cross-examination R. W. 3 has stated that failure to support Form 26 by an affidavit duly sworn in before a competent authority is a defect of substantial nature. In paragraph 76 of the cross-examination R.W. 3 has stated that reasoned order was passed rejecting the nomination paper of the election petitioner no sooner the nomination paper of the election petitioner was rejected. In paragraph 77 of the cross-examination R.W. 3 has stated that reason for rejecting the nomination paper of the election petitioner is mentioned in the order by which his nomination paper was rejected. In paragraph 78 of the cross-examination R.W. 3 has stated that the order which is shown to him is the same order which he passed rejecting the nomination paper of the election petitioner, which is marked as Ext. 9. In paragraph 79 of the cross-examination R.W. 3 has stated that perusal of the order rejecting nomination paper of the election petitioner would indicate that the nomination paper of the election petitioner was rejected for his failure to support his Form 26 by an affidavit sworn before the competent authority. Aforesaid rejection order was passed relying on Clause 9.6 of Chapter VI of the Hand Book issued for the 2009 Parliamentary Election, which is also mentioned in the day to day order sheet maintained by R.W. 3. In paragraphs 80, 81 of the cross-examination R. W. 3 has stated that perusal of Clause 9.6 of Chapter VI of the handbook indicate what may constitute defect of substantial nature in the nomination paper including the grounds for rejection of the nomination paper. In paragraph 82 of the cross-examination R. W. 3 has stated that Form 26 is referred to in sub-clause (viii) of Clause II of Chapter VI of the Hand Book. In paragraph 83 of the cross-examination R.W. 3 having seen N.B. below sub-clause (viii) of Clause 10.1 of Chapter VI stated that if the prescribed affidavits have been filed, but are found or considered to be defective or containing false information, the nomination should not be rejected on this ground. The witness volunteers" that the present case is in the grey area of sub-clause (viii) and the note below, which has been taken note in the reasoned order. In paragraph 84 of the cross-examination R. W. 3 has stated that the grey area referred to above is taken note in the order



rejecting nomination paper of the election petitioner as it is stated in the order that election petitioner did not file affidavit sworn before the competent authority supporting contents of Form 26. In paragraph 85 of the cross-examination R. W. 3 has stated that the order rejecting the nomination paper of the election petitioner does not refer to the specific sub-clause of Clause 10.1 whereunder the nomination paper of the election petitioner was rejected. In paragraph 86 of the cross-examination R.W. 3 has stated that the order by which he rejected the nomination paper of the election petitioner refers to sub-clauses (1), (2) and (3), of Clause 5 of the order dated 27-3-2003 of the Commission. In paragraph 87 of the cross-examination R.W. 3 has stated that he is unable to pin point the sub-clause of Clause 5 of order dated 27-3-2003 of the Commission whereunder Form 26 is referred to. In paragraph 88 of the cross-examination R.W. 3 has stated that sub-clause (1) of Clause 5 of letter dated 27-3-2003 of the Commission refers to affidavit supporting format, Annexure-I. In paragraph 89 of the cross-examination R. W. 3 has stated that affidavit supporting Annexure-I of the nomination paper of the election petitioner was without any defect. In paragraph 90 of the cross-examination R. W. 3 has stated that sub-clauses (1) and (2) of Clause 5 of letter dated 27-3-2003 of the Commission not only refers to Annexure-1 of the nomination paper but also the contents of Form 26. In paragraph 91 of the cross-examination R. W. 3 has stated that the word 'the said affidavit' in sub-clause (2) of Clause 5 of letter dated 27-3-2003 of the Commission refers to affidavit supporting Annexure-1. In paragraph 92 of the cross-examination R.W. 3 has stated that it is true that the affidavit referred to in sub-clause (2) of Clause 5 of the letter dated 27-3-2003 of the Commission does not refer to Form 26 but the other informations which are required thereunder are the same informations which is contained in sub-clauses (1) and (2) of Clause 3 of letter dated 27-3-2003 which is part of Form 26. In paragraph 93 of the cross-examination R.W. 3 has stated that there is no objection in regard to the information given by the election petitioner in Form 26 appended with his nomination paper. In paragraph 94 of the cross-examination R.W. 3 has stated that it is incorrect to suggest that the scrutiny proceeding in regard to the scrutiny of the nomination paper of the election petitioner was postponed to the next day as having found the defect in Form 26 appended with nomination paper of the election petitioner, the same was shown to the representative of the election petitioner who having seen the defect, admitted that the affidavit supporting Form 26 has not been sworn before the competent authority and in such view of the matter, nomination paper of the election petitioner was rejected on the date of scrutiny itself and list of validly nominated Candidates was finalized on the date of scrutiny itself. The application explaining the defect was filed on 12-4-2009 by which time scrutiny process was already over and the nomination paper of the election

petitioner stood rejected. In paragraph 95 of the cross-examination R. W. 3 has stated that after rejection of the nomination paper of the election petitioner on 11-4-2009, election petitioner along with his Lawyers and representatives had come to his chambers in the forenoon of 12-4-2009 and tried to persuade him to reconsider the order rejecting the nomination paper of the election petitioner. In the evening of 12-4-2009 at 5.20 P.M. election petitioner filed representation before the Deputy Election Officer, which was put up before R. W. 3 at 7.30 P.M. The time of filing of the representation on 12-4-2009 including the time when the same was put up before R. W. 3 has been indicated in the left margin of the petition dated 12-4-2009 by R.W. 3 in his own pen. In paragraph 96 of the cross-examination R. W. 3 has stated that he has not mentioned the details of deliberations held on 12-4-2009 in his order sheet as the scrutiny process was already over on 11-4-2009. In paragraph 97 of the cross-examination R. W. 3 has stated that it is incorrect to suggest that nomination paper of the election petitioner has been wrongly rejected by his violating the instructions of the Commission. In paragraph 98 of the cross-examination R. W. 3 has stated that it is incorrect to suggest that order rejecting nomination paper of the election petitioner was passed on 12-4-2009 or on some other future date but the same has been antedated. In paragraph 99 of the cross-examination R.W. 3 has stated that it is absolutely wrong and incorrect to suggest that during the scrutiny of the nomination paper of the election petitioner, request was made by Sri Prabhakar Prasad Singh, proposer of the election petitioner and M/s. Prabha Shankar Singh and Birendra Kumar Singh, Advocate to permit the election petitioner to remove the defect as he was available in the Collectorate campus and to postpone the scrutiny proceedings of the nomination paper of the election petitioner for tomorrow. In paragraph 100 of the cross-examination R.W. 3 has stated that it is absolutely incorrect to suggest that on 11.4-2009, he was requested by the election petitioner or his representative to adjourn the scrutiny proceedings for tomorrow, in response where to, he gave them time for hearing on 12-4-2009 at 11.00 A.M. In paragraph 101 of the cross-examination R. W. 3 has stated that the suggestion that pursuant to adjournment granted for considering the scrutiny of the nomination paper of the election petitioner, election petitioner and his Advocates came to his chamber on 12-4-2009 in the forenoon is absolutely incorrect as earlier itself he has stated that they had come on their own in delegation.

15. Sri Shayamal Kishore Pathak, R.W. 4 has stated in his examination in chief that while he was posted as Director, Accounts Administration and Self Employment, DRDA, at Khagaria the Commission announced Parliamentary Election in 2009. R.W. 4 was notified to act as Assistant Returning Officer to aid and assist the Returning Officer as and when required. In paragraph 3 of

the examination in chief R.W. 4 has stated that election petitioner has filed his nomination paper in four sets before the Returning Officer on 6-4-2009. At the time of presentation of the nomination paper the preliminary verification was done. In paragraph 4 of the examination in chief R.W. 4 has stated that in course of scrutiny made by the authority concerned, it was found that petitioner deposited Annexure-1 in prescribed format duly supported by an affidavit as per instruction of the Commission bearing no.3/ER/2003/JS-II dated 27-3-2003 but admittedly attached Form 26 though found filled up but not supported by an affidavit. In paragraph 5 of the examination in chief R.W. 4 has stated that under Chapter VI, paragraph 9.6 of the Handbook, failure to file affidavit in Form 26 has been mentioned as the defect of substantial nature requiring rejection of nomination paper in view of Commission order no. 3/ER/2003/JS-II dated 27-3-2003 which reads as follows :—"Non-furnishing of the affidavit by any candidate shall be considered to be violation of the order of the Hon'ble Supreme court and the nomination of the candidate concerned shall be liable to rejection by the Returning Officer at the time of scrutiny of nominations for such non-furnishing of the affidavit." In paragraph I of the cross-examination R.W. 4 has stated that he was appointed as Assistant Returning Officer by the Commission. He further stated in the same paragraph that Returning Officer had appointed him Specified Assistant Retuning Officer under Form 8 for receiving nomination paper from the Candidates. In paragraph 2 of the cross-examination R. W. 4 has stated that he does not remember the exact number of Assistant Returning Officers, who were appointed besides him. In paragraph 3 of the cross-examination R. W. 4 has stated that the nomination paper for the impugned election could be filed during the period between 02-04-2009 - 09-04-2009 until 3.00 P.M. In paragraph 4 of the cross-examination R.W. 4 has stated that 20 Candidates had filed their nomination paper for contesting the impugned election. In paragraph 5 of the cross-examination R.W. 4 has stated that different Candidates filed nomination paper in different sets. In paragraph 6 of the cross-examination R. W. 4 has stated that election petitioner had also filed nomination paper on 06-04-2009 in four sets. In paragraph 7 of the cross-examination R.W. 4 has stated that the nomination paper was presented by the election petitioner himself along with his proposers. In paragraph 8 of the cross-examination R.W. 4 has stated that after the election petitioner presented his nomination paper, he was also administered oath by the Returning Officer, R. W. 3, the then Collector, Khagaria. In paragraph 9 of the cross-examination R.W. 4 has stated that the nomination paper of the election petitioner was received by the Returning Officer himself in his presence, which was checked by R.W. 4, Sub-Election Officer and the

Assistants present considering only technical aspect. In paragraph 10 of the cross-examination R. W. 4 has stated that after having technically checked the nomination paper of the election petitioner, a check list was prepared. In paragraph II of the cross-examination R.W. 4 has stated that check list shown to him was prepared by him, other officers present after receipt of the nomination paper from the petitioner but for their convenience. In paragraph 12 of the cross-examination R.W. 4 has stated that the check list shown to him, though contains the signature of the officers, but it was for their use and not part of the official election record. In paragraph 13 of the cross-examination R. W-, 4 has stated that information included in the check list was included therein as the information included therein was then found correct by them. In paragraph 14 of the cross-examination R.W. 4 has stated that having seen the question posed in Column no. 7 of the aforesaid check list, Ext.5, the witness stated that the answer to the said question has been given in affirmative. In paragraph 15 of the cross-examination R. W. 4 having seen column no. 7 in Ext.5 and its answer stated that it was not the stage to examine the defects in Form 26. In paragraph 16 of the cross-examination R. W. 4 has stated that having seen paragraph 19.1 of Chapter V of the Hand Book, the witness stated that notice as contemplated in the said provision was not issued to the election petitioner because Form 26 was filed along with the nomination paper. In paragraph 17 of the cross-examination R. W. 4 has stated that at the time of receipt of the nomination paper, no notice regarding lack of affidavit supporting Form 26 was given to the election petitioner. In paragraph 18 of the cross-examination R.W.4 has stated that on the date of receipt of the nomination paper, election petitioner was not given any opportunity to submit the affidavit supporting Form 26 appended with .the nomination paper. In paragraph 19 of the cross-examination R. W. 4. has stated that last date for filing the nomination paper was 09-04-2009 until 3.00 P.M. In paragraph 20 of the cross-examination R.W. 4 has stated that Form 8 referred to in paragraph 1 of his cross-examination is incorrectly typed for Form 1. In paragraphs 21, 22 of the cross-examination R.W. 4 has stated that Check list, Ext.6 was drawn by him on 6-4-2009 which bears the signature of Returning Officer. In paragraph 23 of the cross-examination R. W. 4 has stated that in response to the question posed in Column no. 2 of Ext.6 concerning the affidavit in Form 26, the witness stated that the answer to the said question is rerrendered in affirmative. In paragraph 24 of the cross-examination R.W. 4 has stated that he is not aware about the instructions sent by the Commission to the Returning Officer for conducting the election. In paragraph 26 of the cross-examination R.W. 4 has stated that there is a provision in the instructions issued by the Commission for conducting Parliamentary election to issue

copy of the check list to the Candidate or the proposer who has presented the nomination paper. In paragraph 27 of the cross-examination R.W. 4 has stated that there is also provision in the instructions to retain one copy of the check list issued to the Candidate in the office of the Returning Officer. In paragraph 28 of the cross-examination R.W. 4 has stated that the check list is given to the Candidate with a view to enable the Candidate to remove the defect, if any, in the nomination paper or the documents appended therewith. In paragraph 29 of the cross-examination R. W. 4 has stated that he has stated in his examination-in-chief that Form 26 filed by the election petitioner was suffering with a substantial defect as the same was not supported by an affidavit. In paragraph 30 of the cross-examination R. W. 4 has stated that any defect in Form 26 could have been removed by the Candidate by 3.00 P.M. of the last date fixed for filing of the nomination paper i.e. 9-04-2009. In paragraph 31 of the cross-examination R.W. 4 has stated that no notice or intimation for removal of defect in Form 26 filed by the election petitioner was given to him or his proposers until 3.00 P.M. of 9-04-2009. The witness further volunteered in the same paragraph that as Form 26 had already been filed along with the nomination paper, no such notice was given. In paragraph 32 of the cross-examination R. W. 4 has stated that Ext. A/I shown to him is the same Form 26 which was filed by the election petitioner along with his nomination paper. In . paragraph 33 of the cross-examination R. W. 4 has stated that at the time of receipt of the nomination paper, he had examined the documents appended therewith, including Form 26 technically, meaning thereby only with reference to the Electoral Roll number of the Candidate and the proposer. In paragraph 34 of the cross-examination R.W. 4 has stated that contents of the affidavit either in Annexure-I or Form 26 are required to be enquired into at the time of scrutiny of the nomination paper and not at the time of presentation. In the same paragraph he further stated that even if the affidavit, Annexure-1 and Form 26 is blank, the same shall be looked into at the time of scrutiny. In paragraph 35 of the cross-examination R.W. 4 has stated that the suggestion that he has deposed contrary to the instructions of the Commission in regard to verification of the documents with technical stand point, is not correct as at the time of receipt of the nomination paper, the authorities are only required to verify the Electoral Roll number of the Candidate and the proposers. In paragraph 36 of the cross-examination R.W. 4 has stated that there is clear cut instruction of the Commission providing for acceptance, rejection of the nomination paper. In paragraph 37 of the cross-examination R. W. 4 has stated that he is not in a position to indicate on what consideration the Returning Officer may accept or reject the nomination paper. In paragraph 38 of the cross-

examination R. W. 4 has stated that in clause 10.1 of Chapter VI of the Guidelines issued by the Commission, grounds for rejection of nomination paper have been indicated. In paragraph 39 of the cross-examination R.W. 4 has stated that he is not aware on which ground the nomination paper of the election petitioner was rejected. In paragraph 40 of the cross-examination R.W. 4 has stated that in sub-clause (viii) of Clause 10.1 of Chapter VI, there is provision for rejecting the nomination paper of the-Candidate for failure to file affidavit. In the same paragraph he further stated that besides the aforesaid provision, there is yet another letter of the Commission dated 4.7.2008 which provides for rejection of nomination paper for failure of the Candidate to file affidavit. In paragraph 41 of the cross-examination R. W. 4 has stated that in sub-clause (viii) of Clause 10.1, aforesaid affidavits have been mentioned which shall include both the affidavit in Annexure-1 as also Form 26. In paragraph 42 of the cross-examination R. W. 4 has stated that failure to support Form 26 by an affidavit is not within the purview of N.B. beneath sub-clause (viii) of Clause 10.1 of the instructions. In paragraph 43 of the cross-examination R. W. 4 has stated that it is incorrect to suggest that the nomination paper of the election petitioner has been rejected in contravention of the instructions of the Commission because Clause 9.6 of Chapter VI specifically provides for rejection of the nomination paper for failure to support Form 26 by an affidavit. In paragraph 44 of the cross-examination R.W. 4 has stated that it is incorrect to suggest that under Clause 9.6 of Chapter VI, there is no provision for rejection of nomination paper. In paragraph 45 of the cross-examination R. W. 4 has stated that it is incorrect to suggest that he has come to depose at the instance of Respondent no.4, as he has come to depose in response to the summons issued by the High Court.

16. Learned counsel for the election petitioner submitted that the order of rejection of nomination paper of the election petitioner is beyond jurisdiction and contrary to the statutory provisions contained in Section 36 of the Act. According to counsel for the petitioner Section 36 of the Act does not contemplate rejection of the nomination paper on any ground other than the grounds prescribed in Section 36 i.e. disqualification of the candidate or defect in the form of nomination filed by the candidate. Section 33 of the Act read with Rule 4 of the Rules prescribe the form of nomination paper which is numbered as Form 2A to 2E. There being no defect in the nomination paper submitted by the election petitioner in Form 2A and the parts appended therewith his nomination paper could not have been rejected. In this connection, it is further submitted that Form 26 is prescribed separately under Rule 4A of the Rules to be furnished additionally

along with the nomination paper but is not part of the nomination paper. According to learned counsel for the petitioner Form 26 being not the part of the nomination paper, any defect in Form 26 does not come within the grounds enumerated under Sub-section (2) of Section 36 of the Act for rejection of nomination paper. Reliance in this connection is placed on the judgment of this Court in the case of Mahesh Prasad Singh Vs. Shatrughan Sinha, 2012(4) PLJR 1010, paragraph 38. In this connection, learned counsel for the petitioner also submitted that Section 36 of the Act also does not refer to any of the requirement mentioned under Section 33A of the Act as a ground for rejection of the nomination paper. Learned counsel further submitted that even otherwise the information required to be furnished under Section 33A (1) of the Act has admittedly been furnished by the election petitioner in the prescribed format, Form 26 duly signed by the election petitioner at the time of filing of the nomination paper which was accepted without any objection about correctness of such information. According to learned counsel there is substantial compliance of Section 33A of the Act by the election petitioner. Defect of not affirming affidavit as per Sub-section (2) of Section 33A of the Act cannot be the basis for rejection of nomination paper as the same has not been envisaged under Section 36 of the Act. Learned counsel for the petitioner submitted that order of rejection of nomination paper on the ground that there was defect in Form 26 filed by the election petitioner is illegal, improper and beyond jurisdiction.

17. Learned counsel for the petitioner further submitted that order of rejection of nomination paper is also illegal and improper because neither any defect about Form 26 was pointed out by the Returning Officer at the time of presentation of nomination paper nor any notice was given to him for rectification of defect in Form 26. In this connection, it is submitted that having received the nomination paper and the additional information in Form 26 vide check list Ext. 5 prepared under the signature of three officials including the Returning Officer R.W. 3 and no further requirement found or noted therein with regard to any correction vide Item-7 of Ext. 5 the nomination paper could not have been rejected without disclosing such requirement to the candidate and without giving reasonable opportunity to remove the defect, more so when copy of check list indicating no further requirement or defect as regards Form 26 vide Item No.1 of the check list, Ext. 6 was given to the election petitioner by the Returning Officer after receiving the nomination paper on 6.4.2009. In this connection, it is also submitted that the instructions given by the Commission in the Handbook clearly provides in Chapter V that notice is to be given to the candidate for

any requirement or defect at the time of presentation of the nomination paper. Paragraph 19.1 of Chapter V contemplates that in case a candidate fails to file the affidavit the Returning Officer should bring this requirement to the notice of the candidate, for which a standard format has been prescribed In Form 11 of the Handbook. The Handbook further instructs the Returning Officer in paragraph 19.1 to serve on the candidate or his proposer immediately on presentation of the nomination paper and the candidate should be asked to file duly sworn affidavit latest by 3 P.M. on the last date of filing of nomination paper. In this connection, reliance is placed over the contents of the protest petition dated 12.4.2009, Annexure-4 to the election petition and marked as Ext. 3 as also to the assertion of the election petitioner, P.W. 1 in his examination in chief. The relevant contents of both the protest petition dated 12.4.2009 as also the examination in chief of P.W. 1 is quoted below :—

“.....the concerned election authority has not pointed out about any mistake regarding the affidavit in Form 26 till the last date of nomination i.e. on 9-4-2009 and in this regard no any direction has been made by the concerned authority to me or my proposer.” “Neither before scrutiny i.e. before passing of order dated 11-4-2009 nor during scrutiny on 11-4-2009, I was ever informed by the authority about such defect in Form 26 nor I was ever given any opportunity to correct the said defect.” Further :—

“That at the time of scrutiny my proposer Prabhakar Prasad Singh in absence of me requested the concerned authority to given an opportunity for correction of the mistake but it is not admitted by the concerned authority.”

Aforesaid assertion of the election petitioner is also admitted by the Returning Officer, R.W. 3 in paragraphs 24 to 29 of his cross examination where he has admitted that in check list Ext. 5 and 6 no defect with regard to Form 26 was pointed out to the election petitioner after presentation of the nomination form and issue of check list to the election petitioner as answer to the question posed in column-7 of Ext. 5 and column 1 of Ext. 6 has been rendered in affirmative, meaning thereby that there is no defect in Form 26. Further reference is also made to the admission of the Returning Officer in paragraphs 52 to 54 that notice under Clause 19.1 of Chapter V of the Handbook was not given to the election petitioner after presentation of the nomination paper by him stating that Form 26 filed by the election petitioner along with nomination paper is defective as the contents of Form 26 has not been supported by an affidavit.

18. Learned counsel for the election petitioner further submitted that it is also admitted that even at the



time of scrutiny neither any candidate nor any person on behalf of the candidate raised any objection with regard to any defect in Form 26 nor any objection was raised with respect to information/statement made by the election petitioner in the said Form 26. It was the Returning Officer who himself raised the issue of defect in Form 26 and rejected the nomination paper without giving the election petitioner opportunity to rebut the objection. According to learned counsel for the petitioner Returning Officer having acted in contravention of the instructions of the Commission by not giving any notice and opportunity to rectify the defect in Form 26 Returning Officer has improperly rejected the nomination paper of the election petitioner. In this connection, learned counsel further relied on the well settled principle of law that nomination paper should not be rejected for technical defects without the same being pointed out and reasonable opportunity for correction/removal given to the candidate for removing the defect by even postponing the scrutiny to the next day. Reliance in this connection is placed on the judgment of the Supreme Court in the case of Nandiesha Reddy Vs. Kavitha Mahesh, (2011) 7 SCC. 721, paragraph 24 and in the case of Ramesh Rout Vs. Rabindra Nath Rout, (2012) 1 SCC 762, paragraph 76 to 78 and 81.

19. Learned counsel for the petitioner further submitted that the ground for rejecting the nomination paper of the election petitioner as indicated in the order dated 11-4-2009 passed in English, Annexure-3/Ext. 9 and communicated to the election petitioner is also erroneous as the ground taken therein is neither supported by law nor facts. Rejection order has been passed for failure to support the statement made in Form 26 by an affidavit as according to Returning Officer affidavit supporting the contents of Form 26 is necessary because it concerns disqualification of the candidate as mentioned in Article 102(1) of the Constitution and Section 8 of the Act. According to learned counsel for the petitioner, perusal of Form 26, Ext. A would reveal that the information sought therein does not concern any disqualification as envisaged under Section 8 of the Act or Article 102(1) of the Constitution. Information sought under Form 26 concerns information other than referred to in Section 8 of the Act. According to learned counsel for the election petitioner the order dated 27-3-2003 referred to in the rejection order dated 11-4-2009, Annexure-3/Ext.9 also does not refer to any affidavit in Form 26. Order dated 27-3-2003 is only limited to the information in Annexure-1 as per paragraph 16 of the order dated 27-3-2003 of the Commission. In the instant case, election petitioner having furnished the required information as per paragraph 16 of order dated 27-3-2003 in Annexure-I duly supported by an affidavit and the other information in Part 3 of the nomination paper

that he is not. disqualified under Section 8 of the Act. The order rejecting his nomination paper for failure to support the information in Form 26 by an affidavit is wholly improper.

20. Learned counsel for the election petitioner challenged the so called order dated 11-4-2009 passed by the Returning Officer in Hindi and preserved in the order sheet without serving copy thereof on the election petitioner and marked as Ext. 9 on the ground that the same is post script and has been passed with the object to supplant the order of rejection passed in English dated 11-4-2009, Annexure-3, certified copy whereof was given to the election petitioner and also marked as Ext. 9 on the ground that the same is factually illegally, erroneous and has been passed only for the purpose to refute the assertion of the petitioner that during the scrutiny of his nomination paper on 11-4-2009 his proposer Prabhakar Prasad Singh had requested the Returning Officer to grant opportunity for removing the defect in Form 26, which request was not accepted and for technical defect nomination paper of the election petitioner was rejected. In this connection, it is further submitted that the Returning Officer R. W. 3 on the one hand admits in paragraph 55 of his cross-examination that the election petitioner along with his lawyer and representative had come to his Chamber in the forenoon of 12-4-2009 and tried to persuade him to reconsider the order rejecting the nomination paper of the election petitioner but the protest petition was submitted in the evening at 5.20 P.M. before Deputy Election Officer. In this connection, it is submitted that it is quite absurd that the lawyers would appear in forenoon and the protest petition would be filed in the evening. According to the learned counsel for the petitioner evidently the receiving of the protest petition was ante-timed and the explanatory order sheet of rejection was then passed in Hindi. According to him no reliance can be placed on the veracity of the order sheet in Hindi, which was produced in this Court along with records. According to learned counsel for the petitioner the aforesaid order in Hindi regarding time being not asked for during scrutiny stands contradicted by the election petitioner, P.W. 1 in his examination in chief as well as in the objection dated 12-4-2009, Ext. 9. Reference in this connection, is also made to the evidence of Prabhakar Prasad Singh, P.W. 2 who was present during scrutiny on behalf of election petitioner and made the following assertion in his examination in chief:- "I immediately requested the Returning Officer to allow the removal of that defect which was possible as Sri Satya Narayan Babu was in the campus of the Collectorate itself. But, the same was not accepted." "I called Sri Prabha Shankar Singh, one communist party leader and told about it. He also-came there with two Advocates, namely,

Sri Durgesh Prasad Singh and Sri Birendra Kumar Singh and they made the submissions before the Returning Officer. But the Returning Officer did not accept it." Reference is also made to paragraphs 54 and 55 of the cross-examination of P.W. 2 where he has categorically stated that he made verbal request for granting time but the same was refused by the Returning Officer. P.W. 3 Prabha Shankar Singh has also contradicted the Returning Officer in his examination in chief where he states that on receipt of information from P.W. 2 on mobile he reached the scrutiny hall along with two Advocates in the evening of 11-4-2009 and requested for time and permission to remove the defects immediately but the same was not accepted. Further reference is made to the evidence of P.W. 4 Birendra Kumar Singh, Advocate who also stated in his examination in chief and cross-examination that on the request of P. W. 3 he along with Durgesh Prasad Singh, Senior Advocate had appeared before the Returning Officer in the evening on the date of scrutiny 11-4-2009 and had made submissions and argument that "there is no defect in furnishing of the affidavit in Form 26 as it has been duly affirmed stated, sworn, signed and presented by the election petitioner before the District Magistrate-cum-Returning Officer who was also a Class-I Magistrate and had power to administer oath." "Even if he considers it as defect then it was minor, clerical defect which must be ignored and the nomination paper cannot be rejected on that ground." Further the Returning Officer was requested to take instruction from the Commission on this issue. Returning Officer, however, refused to do so in case of defect in the nomination paper of another candidate Sri Bharat Kumar Yadav the Returning Officer talked to the Commission and accepted his nomination paper. In view of the aforesaid assertion of P.W. 4 learned counsel for the petitioner submitted that the order sheet in Hindi, Ext. 9 mentioning that no one prayed for any time or made submission on behalf of the election petitioner at the time of scrutiny stands completely falsified and contradicted. According to learned counsel order sheet in Hindi has actually been prepared by the Returning Officer as an afterthought to justify his previous action of not giving notice to the election petitioner about the defect in Form 26 as also granting time to remove the defect in Form 26, which is also evident from paragraph 59 of his cross-examination as in the said paragraph Returning Officer admitted that swearing of affidavit supporting Form 26 cannot be allowed on the date of scrutiny of the nomination paper.

21. Learned counsel for the petitioner also submitted that rejection of the nomination paper was also improper for the reason that the statement in Form 26 was duly filled in and signed by the election petitioner on the date and time of presentation of the nomination paper i.e. on

6-4-2009 before the District Magistrate-cum-Returning Officer who himself has the power of Ist Class Magistrate to administer oath. The duly signed Form 26 was presented by the election petitioner in person before the District Magistrate cum Returning Officer who not only accepted but also identified the election petitioner, which fact is admitted by the Returning Officer, R.W. 3 in paragraph 39 to 44 of his cross examination, as such, according to counsel for the petitioner all formalities for supporting the contents of Form 26 by an affidavit on the part of the election petitioner having been completed before the District Magistrate-cum- Returning Officer who is Magistrate of Ist Class, the oath supporting Form 26 is deemed to have been taken and absence of signature of the Magistrate in token of oath having not been recorded cannot be the basis to nullify the oath taken by the election petitioner before the District Magistrate-cum-Returning Officer. In the light of the aforesaid submission learned counsel for the petitioner submitted that Form 26 was rightly received by the Returning Officer at the time of presentation of the nomination paper on 6-4-2009 and having received Form 26 without pointing out defect the nomination paper could not have been subsequently rejected at the time of scrutiny on the ground that Form 26 was defective.

22. Learned counsel for the petitioner also submitted that Returning Officer also committed error in the order dated 11-4-2009 written in Hindi by placing reliance on Clause 9.6 of Chapter VI of Handbook to justify the rejection of nomination paper on the ground of substantial defect. According to learned counsel Clause 9.6(c) refers to a complete failure to file affidavit in Form 26 and/or affidavit provided by the Commission for disclosing criminal antecedents, assets liabilities and educational qualification, which obviously means non-submission of the Form itself, wherein necessary disclosures are required to be made. Once the required Form duly filled in and signed by the concerned candidate is submitted disclosing the necessary information Clause 9.6(c) of Chapter VI of the Handbook is not attracted as the case will not come within the meaning of defect of substantial nature contemplated in . clause 9.6 of Chapter VI of the Handbook. To buttress the aforesaid submission learned counsel for the election petitioner placed reliance on Clause 10.1 (viii) of Chapter VI of the Handbook, which instructs the Returning Officer to reject the nomination paper if the prescribed affidavit has not been filed at all by the candidate. According to learned counsel the use of expression "at all" in the aforesaid clause (viii) indicates the nature of direction issued by the Commission to the Returning Officer to reject the nomination paper of the candidate only in such case in which information required

to be furnished in Form 26 and Annexure-1 has not been furnished by the candidate. Reference in this connection, is also made to the N.B. beneath the aforesaid clause (viii) preceded by 'or' to clarify clause (viii) by instructing the Returning Officer NOT to reject a nomination paper if the prescribed affidavits have been filed but are found or considered to be defective or containing false information. In this connection, learned counsel relied on the deposition of the Returning Officer, R. W. 3 in paragraph 3 of the examination in chief and paragraph 40 of the cross-examination and the order dated 11-4-2009 passed by the Returning Officer in Hindi whereunder Returning Officer has admitted that election petitioner filed Form 26 along with nomination paper, which was not only duly filled in but also signed by him including the oath part and according to learned counsel the present case was within the four corners of N.B. beneath sub-clause (viii) of Clause 10.1 of Chapter VI of the Handbook and the nomination paper of the election petitioner should not have been rejected.

23. Learned counsel for the petitioner next submitted that Returning Officer has admitted in paragraphs 82 to 84 of his cross-examination that the case of the petitioner is in the grey area of sub-clause-(viii) of Clause 10.1 of Chapter VI of the Handbook and taking note of the grey area he preferred to reject the nomination paper though he never referred to clause 10.1 of Chapter VI of the Handbook in his order dated 11-4-2009, Annexure-3, which was served on the petitioner or the other order dated 11-4-2009 passed in Hindi and retained in the file but not served on the petitioner at the relevant time. Learned counsel submits that decision of the Returning Officer to reject the nomination paper even when he was in doubt, as the matter fell in grey area, is evidently improper and incorrect as the benefit of doubt in such cases always goes in favour of the candidate. In this connection, learned counsel referred to the instructions of the Commission given in clause-7 of Chapter VI of the Handbook relating to scrutiny informing the Returning Officer that there is presumption that every nomination paper is valid unless the contrary is prima facie obvious or has been made out. In case of a reasonable doubt as to the validity of a nomination paper, the benefit of such doubt must go to the candidate concerned and the nomination paper should be held to be valid. By improperly rejecting a nomination paper the candidate is prevented from contesting the election. There is legal presumption that the result of the election has been materially affected by such improper rejection and the election will, therefore, be set aside. There is no such legal presumption necessarily in the converse case where a candidate's nomination has been improperly accepted. It is always safer, therefore, to adopt a comparatively liberal approach in dealing with minor technical or clerical errors.

24. Learned counsel for the petitioner finally submitted that the election petition is maintainable and has been filed complying the provisions of Sections 81, 82, 83 of the Act. The result of the election was declared on 16-5-2009 and the election petition was presented by the election petitioner within 45 days on 23.6.2009 on the ground of improper rejection of the nomination paper as enumerated under Section 100(1)(c) of the Act accompanying with additional copies thereof duly attested by the petitioner as true copy as per the number of respondents. Since the election petitioner has not claimed further declaration for himself being elected only the returned candidate, respondent no.4 has been joined as respondent along with other officials. A concise statement of material facts stated in the election petition, specifically raising the grounds for the improper rejection. The necessary enclosures have been added as annexures which are part of election petition clearly sets out the case of the election petitioner with respect to non-furnishing of necessary notice etc. by the Returning Officer and/or pointing any defect and giving opportunity before rejecting the nomination paper, which is complete cause of action. In the light of the aforesaid submission, it is submitted that there is no application of any of the provisions under Order 7 Rule 11 C.P.C.

25. Learned counsel for respondent no.4 opened his submission with reference to the judgment of the Supreme Court in the case of Shri Baru Ram Vs. Smt. Prasanni and others, AIR 1959 Supreme Court 93, paragraph 14 and placed reliance over the following passage :-

"Whenever the Statute requires a particular Act to be done in a particular manner and also lays down that failure to comply the said requirement leads to a specific consequence it would be difficult to accept the argument that the failure to comply with the said requirement should lead to any other consequence."

26. Learned counsel then referred to Part V, Chapter I of the Act, which provides for conduct of elections and nomination of candidate for contesting the elections to the House of Parliament and to the House and Houses of the Legislature of each State. Chapter I of Part V of the Act begins with Section 30 of the Act, which provides for appointment of dates for nomination etc. Section 31 of the Act provides for public notice of elections. Section 32 of the Act lays down that any person may be nominated as candidate if he is qualified to be chosen to fill that seat under the provisions of Constitution and the Act. Section 33 of the Act provides for presentation of nomination paper and the requirement for a valid nomination. Sub-section (I) of Section 33 of the Act according to the counsel for respondent no.4 is important for this case which provides

for the date and time of presentation of the nomination paper by the candidate before the Returning Officer either in person or through his proposer at the place specified in this behalf in the notice issued under Section 31 of the Act. Sub-section (4) of Section 33 of the Act requires the satisfaction of the Returning Officer that the name and the electoral roll number of the candidate and his proposer is the same as those entered in the electoral roll and any misnomer, inaccurate description, clerical, technical or printing error in regard to the name of the candidate or his proposer or any other person, place mentioned in the electoral roll or the nomination paper shall not affect the validity of the nomination paper or the electoral roll and is required to be overlooked. Learned counsel for respondent no.4 then referred to the judgment of the Supreme Court in the case of *Union of India Vs. Association for Democratic Reforms and Another*, (2002) 5 SCC 294 and submitted that Supreme Court recognized the right of electors under Article 19(1)(a) of the Constitution to know the antecedent including criminal past of a candidate contesting election to the Parliament or State Legislature, which is fundamental and basic for survival of democracy. The little man may think over before making his choice of electing law breaker as law maker. The Supreme Court in the said judgment having read right to information as a facet of right to freedom of speech and expression enshrined under Article 19(1)(a) of the Constitution vide paragraph 48 of the judgment dated 2.5.2002 directed the Commission to issue order under Article 324 of the Constitution calling for information on affidavit from each candidate seeking election to Parliament/State Legislature as part of his nomination paper about the antecedent, assets, liabilities of the candidate, spouse and other dependents. To comply the aforesaid direction of the Supreme Court Commission issued order no.3/ER/2002/JS-II/Vol. III dated 28.6.2002 authorising the Returning Officer to call for information on affidavit about the antecedent, assets, liabilities of the candidate, spouse and other dependents with further direction to the Returning Officer to reject the nomination paper of the candidate who furnished any wrong, incomplete or suppressed material information about his antecedent, assets, liabilities of self, spouse and dependents in the affidavit filed along with nomination paper. The Parliament in order to give effect to the direction of the Supreme Court rendered in the case of *Union of India Vs. Association for Democratic Reforms and others*(supra) inserted Sections 33A, 33 B in the Act by Act no.72 of 2002 with effect from 28.4.2002. Section 33A requires the candidate to furnish information under the Act or the Rules made thereunder together with his antecedent. Section 33A of the Act requires the candidate to disclose only those informations which are required

under the Act and the Rules and no other information directed to be disclosed/furnished under judgment, decree or order of any court. Validity of Section 33B of the Act was challenged before the Supreme Court in the case of *People's Union for Civil Liberties(PUCL) and another Vs. Union of India* and the Supreme Court under judgment dated 13-03-2003 reported in (2003) 4 SCC 399 declared Section 33B of the Act ultra vires with prospective effect i.e. from the date of judgment after observing in paragraph 73, 123 that no exception can be taken to the insistence of affidavit with regard to the matters specified in the judgment of the Supreme Court in the case of *Union of India Vs. Association for Democratic Reforms*(supra). In order to give effect to the aforesaid judgment of the Supreme Court Commission issued order no.3ER/2003/JS-II dated 27-3-2003 in exercise of power under Article 324 of the Constitution and required the candidates contesting the election of Parliament, State Legislature to furnish the required information on affidavit in Annexure-I.

27. Learned counsel for respondent no.4 in the light of the provisions of Section 33A of the Act as also the judgment of the Supreme Court in the case of *People's Union for Civil Liberties*(supra) submitted that the candidate contesting the election in terms of the provisions of the Act is required to furnish information as per the provisions of Sub-section (1)(i), (ii) of Section 33A of the Act to the Returning Officer by way of affidavit filed under Sub-section (1) of Section 33 of the Act, as is required under Sub-section (2) of Section 33A of the Act. Learned Counsel also submitted that for furnishing information by the candidate contesting the election under the Act, information required under Sub-section (1)(i),(ii) of Section 33-A of the Act is required to be furnished. For furnishing such information Rule 4A of the Rules was inserted in the Rules providing for information in Form 26 duly supported by affidavit which is required to be delivered to the Returning Officer along with nomination paper under Sub-section (1) of Section 33 of the Act. Learned Counsel for respondent no.4 also submitted that conjoint reading of Sections 33(1) and 33-A(2) of the Act would make it obvious that the intendment of Parliament is to ensure that Form 26 is filed by the candidate or his proposer before the Returning Officer along with nomination paper. Nomination paper filed without affidavit supporting Form 26 cannot be said to be a complete nomination paper as provided under Section 33(1) of the Act.

28. Learned Counsel further submitted that in case, Form 26 duly supported by an affidavit is not filed along with nomination paper the same may be filed until 3 P.M. of the last date for filing nomination paper but once the time is over for filing nomination paper affidavit supporting



Form 26 cannot be filed to remove the defect in the nomination paper and for non-filing of the said affidavit supporting. Form 26 the nomination paper of the candidate concerned is incomplete the Returning Officer is left with no option but to reject the nomination paper of the candidate concerned as on the date of scrutiny the Returning Officer cannot permit the candidate to remove the defect by filing affidavit supporting Form 26 and/or allowing the candidate concerned to support Form 26 by an affidavit on the date of scrutiny though Form 26 filed with the nomination paper at the time of presentation of the nomination but without affidavit.

29. Learned counsel further submitted that the election petitioner is well educated person and has practiced as a lawyer also for sometime and therefore he cannot say that he was not aware about the procedures by which an affidavit is affirmed. In his evidence itself election petitioner has admitted the fact that he worked as lawyer for sometime and therefore he was aware about the affidavits, yet he filed his nomination paper with Form 26 but without supporting the same with an affidavit. In his deposition before the court also he has stated that no attestation by any 1st Class Magistrate or Oath Commissioner appointed by the High Court or Notary Public is required. Reference in this connection, was made by the learned counsel for respondent no.4 to paragraphs 1 to 12 of the cross examination of the election petitioner.

30. Learned counsel for respondent no. 4 also submitted that Sub-section (2)(b) of Section 36 of the Act provides that the Returning Officer may reject a nomination paper for failure to comply with any of the provisions of Section 33 or Section 34 of the Act. Sub-section (5) of Section 36 of the Act cast a duty on the Returning Officer to hold the scrutiny on the date appointed in this behalf as per sub-clause-(b) of Section 30 of the Act and shall not allow any adjournment of the scrutiny proceeding unless interrupted or obstructed by riot or open violence or cause beyond his control. Proviso to Sub-section (5) of Section 36, however, provides that in case an objection is raised by the Returning Officer or is made by any other person, the candidate concerned may be allowed time to rebut the objection not later than the next day but one following the date fixed for scrutiny. According to learned counsel proviso to Sub-section (5) of Section 36 provides for adjournment for rebuttal but this adjournment could be granted by the Returning Officer only if it is asked for. The object behind this adjournment was that if any objection is raised at the time of scrutiny since it is by 'surprise, the candidate concerned may be allowed time so that he could be heard in rebuttal and if he is intending to produce any document in rebuttal he should get opportunity for being heard in rebuttal.

31. Learned counsel for respondent no. 4 has given example by stating that if any nomination is objected to by raising objection there could be a purpose for adjournment if the candidate concerned or his representative would ask for time for rebuttal but if the candidate or his representative is not interested for rebuttal of the objection and is not asking for any adjournment or time there is no purpose to adjourn the proceeding of scrutiny for the next date by the Returning Officer suo motu. To grant time is the discretion of the Returning Officer but the discretion he will be exercising only when an adjournment is prayed for not suo motu. Having made such submission learned counsel for respondent no.4 stated that admittedly Form 26 was filed without affidavit. When the petitioner presented his nomination paper before the Returning Officer in view of the provisions contained in Sub-section (4) of Section 33, the four sets of nomination paper so filed was verified from technical point of view and as Form 26 was filed without affidavit with the nomination paper, it was not indicated in the memo issued to the election petitioner that he is required to file affidavit in Form 26. The prescribed format for issue of memo to the candidate concerned does not provide for any column regarding any defect in Form 26. According to Form prescribed the candidate concerned is required to be informed only when no Form 26 is filed with the nomination paper which is not the case here. Form 26 was filed by the petitioner along with nomination paper but without affidavit and thus neither the Returning Officer can be blamed for failure in his duty to inform the election petitioner through the memo for filing of another Form 26 on affidavit or for getting the Form 26 filed by the petitioner supported by an affidavit which the election petitioner has filed along with his nomination paper. In this connection, learned counsel for respondent no.4 at the cost of repetition submitted that since the election petitioner was himself a lawyer and was thus aware of the process in which affidavit is sworn, he cannot be permitted to take benefit of his own wrong particularly in view of his evidence in cross-examination, paragraph 8.

32. Learned counsel for respondent no.4 further submitted that it is also the admitted position in the case that on the date of scrutiny the election petitioner was himself not present before the Returning Officer. His representative Prabhakar Prasad Singh was there when the nomination paper of the election petitioner was taken up for scrutiny, the objection was raised by the Returning Officer himself about the defect in Form 26. From the detailed order sheet maintained by the Returning Officer for the impugned election, it is evidently clear that when this objection was raised by the Returning Officer in Form 26, the representative of the election petitioner accepted the fact that Form 26 is not supported by an affidavit but he

did not ask for any hearing or adjournment of scrutiny of the nomination paper of his candidate, though according to order sheet process of scrutiny continued until 9 P.M.

33. Learned counsel for respondent no.4 refuted the submission made by the counsel for the petitioner that order dated 11-4-2009 passed in Hindi and kept in the order sheet without serving a copy thereof on the petitioner is not only post script but also ante-timed to explain and establish that representative of the election petitioner did not ask for any adjournment to explain the objection raised by the Returning Officer at the time of scrutiny of the nomination paper of the election petitioner that Form 26 filed -by the election petitioner along with nomination paper was defective is afterthought and has been raised by the petitioner for the first time during the argument as such plea is neither taken in the election petition nor put to the Returning Officer in cross-examination which continued for couple of days. In this connection, counsel for respondent no.4 also submitted that nothing has been brought on record to disbelieve the Returning Officer to draw any adverse inference against him that he maintained the detailed order sheet only with a view to help respondent no.4. Counsel for the respondent no.4 also made reference to the Handbook which is issued by the Commission in exercise of power under Article 324 of the Constitution.

34. Before placing reliance on the relevant portion of the Handbook learned counsel for respondent no.4 relied on following passage of the judgment of the Supreme Court in the case of *Kuldip Nayar and others Vs. Union of India and others*, (2006) 7 SCC 1, paragraph 427.

“In this context, we would say that where the law on the subject is silent, Article 324 is a reservoir of power for the Election Commission to act for the avowed purpose of pursuing the goal of a free and fair election, and in this view it also assumes the role of an adviser. But the power to make law Under Article 327 vests in Parliament, which is supreme and so, not bound by such advice. We would reject the argument by referring to what this court has already said in *Mohinder Singh Gill* and what bears reiteration here is that the limitations on the exercise of "plenary character" of the Election Commission include one to the effect that "when parliament or any State Legislature has made valid law relating to or in connection with elections, the Commission, shall act in conformity with, not in violation of, such provisions."

35. Having relied on the aforesaid paragraph of the judgment of the Supreme Court learned counsel for respondent no.4 referred to Chapter V of the Handbook which deals with nomination. Paragraph 7.2 of the said

Chapter cast a duty upon the Returning Officer that he should also attach to nomination form, a copy of Form 26 and a copy of the Commission's order no.3/ER12003/JS-II dated 27-3-2003 and paragraph no. 10.3 of the said Chapter provides that no one should be allowed to enter the Returning Officer's room after 3 P.M. for the purpose of delivery of any such document to any intending candidate. He also referred to paragraph 15.1, which provides for preliminary examination of nomination paper and states that no sooner a nomination paper is presented the Returning Officer or the Assistant Returning Officer, as the case may be, is required by law to examine then and there from the technical stand point "but Returning Officer/ Assistant Returning Officer" is not required to hold any formal scrutiny of any nomination paper at that stage."

36. Learned counsel for respondent no.4 also referred to paragraph 19.1 of Chapter V, which cast a duty upon the Returning Officer to bring to the notice of the candidate the requirement of filing an affidavit in Form 26 but such duty casts upon the Returning Officer only when no affidavit in Form 26 has been filed. Returning Officer has been further directed to receive any document like affidavit in Form 26 latest by 3 P.M. on the last date of filing nomination. According to learned counsel paragraph 19.1 of Chapter V lays down the Returning Officer from accepting any affidavit in Form 26 after expiry of time for filing of nomination paper. In view of the aforesaid contents of Chapter V of the Handbook, learned counsel for respondent no.4 submitted that on the date of scrutiny the Returning Officer had no authority to accept any document or affidavit in Form 26. He further referred to Chapter VI of the Handbook, which deals with scrutiny of nomination paper Paragraph 9.6 is the list of defects of substantial nature, which also include failure to file affidavit in Form 26 and/or affidavit provided by the Commission for disclosing the criminal antecedent, assets, liabilities and education qualification. Paragraph 10.1 of Chapter VI deals with grounds for rejection of nomination paper and provides that Returning Officer must reject the nomination paper if the prescribed affidavit has not been filed at all by the candidates.

37. Learned counsel for respondent no.4 also referred to the submission made by the counsel for the petitioner with reference to N.B. below clause (viii) of paragraph 10.1 of Chapter VI and submitted that in paragraph 10.1 nomination should not be rejected if the prescribed affidavits have been filed and thus according to learned counsel filing of affidavit along with nomination paper is a must, but in the present case as Form 26 was filed along with nomination paper without supporting the same with affidavit, Returning Officer was duty bound to reject the same in compliance of the instruction of the Commission contained in clause (viii) of paragraph 10.1.

38. Learned counsel for respondent no. 4 further submitted that in view of the provisions of Article 324 of the Constitution the power of superintendence, direction and control of election is vested in the Commission and in exercise of such power if the Commission has issued direction through the Handbook, which requires the Returning Officer to reject a nomination paper if the prescribed affidavit has not been filed. The Returning Officer had committed no mistake when he rejected the nomination paper of the petitioner for not filing Form 26 duly supported by an affidavit.

39. Learned counsel further submitted that Sub-section (2)(b) of Section 36 of the Act confers power upon the Returning Officer to reject a nomination if there has been a failure to comply with any of the provisions of Sections 33, 34. In this connection, it is pointed out that Section 33A requires filing of an affidavit along with nomination paper under Section 33(1) and according to counsel, nomination paper filed without the affidavit required under Section 33A cannot be said to be complete, unless the required affidavit is filed along with nomination paper and in such circumstances, the Returning Officer had committed no mistake when he rejected the nomination paper of the election petitioner.

40. Learned counsel for respondent no.4 also referred to Rule 4 of the Rules, which requires a candidate to file his nomination paper in one of the Form 2A to 2E which is to be presented under Sub-section (1) of Section 33 of the Act. Rule 4A requires the candidate or his proposer, as the case may be, to deliver affidavit supporting Form 26 along with nomination paper under Sub-section (1) of Section 33. Thus the affidavit in Form 26 has to be filed along with nomination paper until 3 P.M. of the last date for filing of nomination paper. Such requirement of filing of Form 26 supported by an affidavit along with nomination paper would make it clear that affidavit in Form 26 is part of nomination paper and unless an affidavit in Form 26 is filed the nomination paper is not complete as required under Section 33 of the Act. Reliance in this connection is placed on the judgment of the Andhra Pradesh High Court in the case of Mohd. Chand Pasha Vs. T. Madhusudhan Reddy and another, 2006(3) ALD 105. Reference is also made to judgment of the Allahabad High Court in the case of Hari Krishna Lal Vs. Atal Bihari Bajpai, AIR 2003, Allahabad 128 as also to the judgment of the Supreme Court in the case of Shaligram Shrivastava Vs. Naresh Singh Patel, (2003) 2 SCC 176.

41. Finally learned counsel for respondent no.4 submitted that the judgment in the case of Ramesh Rout Vs. Rabindra Nath Rout, (2012) 1 SCC 762 relied upon by the counsel for the election petitioner is not applicable to

the facts of the present case because in the case of Ramesh Rout(supra) the symbol allotment form in original was available when the nomination paper was presented and therefore, presumption was drawn that the original might have been lost when nomination form was sent for preparing the photostat copy. In the present case, it is admitted position that Form 26 which is filed along with nomination paper was not supported by an affidavit at the time of presentation of nomination paper, which defect was not cured until 3 P.M. of the last date for filing of nomination paper. The requirement of filing of affidavit is the requirement of law as declared by the Supreme Court in the case of Union of India Vs. Association for Democratic Reforms and Another (supra), which is also the law of land under Article 141 of the Constitution. In case, failure to support the prescribed form by an affidavit is held not to be sufficient ground for rejection of nomination paper, the two judgments of the Supreme Court in the case of Union of India Vs. Association for Democratic Reforms and Another (Supra) and People's Union for Civil Liberties (supra) would become toothless as direction of the Supreme Court to furnish information required under Section 33(1) of the Act in Form 26 duly supported by an affidavit shall thereby become ineffective and without any force of law as for such failure the nomination could not be rejected.

42. In order to consider the correctness or otherwise of the rival submissions made on behalf of the election petitioner and respondent no.4, it is necessary to first notice the admitted facts. Impugned election was notified on 2.4.2009, as would appear from Annexure-I issued by the Commission fixing 9.4.2009 as the last date for making nomination. Election petitioner filed his nomination paper in person in four sets on 6.4.2009 at 1.25 P.M. in Form 2A comprising six parts along with required documents including Form 26, as required by Rule 4A of the Rules and affidavit Annexure-I in compliance of the order of the Commission bearing no.3/ER/2003/JS-II dated 27-3-2003. Returning Officer having received the nomination paper of the election petitioner in four sets subjected the documents filed along with nomination paper to preliminary examination from the technical stand point, as is required of him in terms of instruction of the Commission contained in Handbook for 2009 General Election vide instructions contained in paragraph 15.1 of Chapter V of the Handbook. The Returning Officer, Senior Incharge Officer, Deputy Election Officer and Designated Police Officer examined the documents appended with the nomination paper of the petitioner from technical stand point prepared check list dated 6-4-2009, Ext. 5 and 6 indicating that petitioner filed two affidavits one in Form 26 and the other Annexure-1 in compliance of the order of the Commission dated 27-3-2003, which is not defective. Copy of the check list,



Annexure-2 was given to the petitioner and the other copy retained in the office of the Returning Officer. Both the check list of documents has been marked as Exts. 5 and 6 vide paragraphs 24 to 29 of the cross-examination of Returning Officer, R. W. 3. Having received the check list dated 6-4-2009 petitioner became satisfied that there is no defect in the documents submitted by him along with his nomination paper including Form 26 as no notice was issued to him pointing out any defect in Form 26 under clause 19.1 of Chapter V of the Handbook vide paragraphs 52 to 54 of the cross-examination of Returning Officer, R.W. 3 and instructed his proposer Sri Prabhakar Prasad Singh, P.W. 2 to appear before the Returning Officer on his behalf on the date and time fixed for scrutiny of the nominations i.e. 11-4-2009. In the light of the authorization made by the election petitioner Sri Prabhakar Prasad Singh P.W. 2 appeared before the Returning Officer on 11-4-2009 the date fixed for scrutiny. During the scrutiny of the nominations Returning Officer perused the nomination papers filed by the election petitioner along with other documents including Form 26 and affidavit Annexure-1 and having found Form 26 submitted by the petitioner along with his nomination papers not been supported by an affidavit duly sworn before a Magistrate of 1st Class or Notary Public or Oath Commissioner appointed by the High Court rejected the four sets of nomination paper of the petitioner bearing serial no. 1 to 4 by four separate orders dated 11-4-2009 passed in English, which is appended with Part 5 of each of the four nomination paper marked Exts. 8, 8/1, 8/2 and 8/3, copy whereof was also given to the petitioner on 12-4-2009 at 10 A.M. Petitioner in order to register his protest before the Returning Officer that his nomination paper has been erroneously rejected under order dated 11-4-2009 on the ground that Form 26, Ext. A/3 submitted by the election petitioner along with his nomination paper on 6-4-2009 was not defective, filed petition dated 12-4-2009, Ext. 3 stating that Form 26 was filed by the petitioner along with nomination paper on 6-4-2009 which was subjected to technical examination by the Returning Officer and others on 6-4-2009 but no defect was communicated to the petitioner, as would appear from the check slip dated 6-4-2009, Ext. 5, 6. For the first time such objection was raised by the Returning Officer during scrutiny on 11-4-2009 and without giving opportunity either to the representative of the petitioner Sri Prabhakar Prasad Singh, P.W. 2 who was present during scrutiny or to the petitioner order dated 11-4-2009 rejecting the nomination of the petitioner was passed, though representative of the petitioner, P.W. 2 requested the Returning Officer to adjourn the scrutiny proceeding so as to enable the representative of the petitioner as also the petitioner to explain the position

with reference to the check slip dated 6-4-2009, Exts. 5, 6 and the provisions of the Act and the Rules. In the representation dated 12-4-2009, Ext. 3 it was further stated that certified copy of the order dated 11-4-2009 was delivered to the election petitioner on 12-4-2009 at 10 A.M. From perusal of complete order sheet maintained by the Returning Officer in connection with impugned election in Hindi which has also been marked as Ext.9 it appears that scrutiny of the nomination papers filed by the different prospective candidate(s) for contesting the impugned election was taken up on 11-4-2009. The scrutiny of the nomination paper of the election petitioner was taken up at the end of the scrutiny proceeding which continued until 9 P.M. In the ordersheet, Ext. 9 Returning Officer besides incorporating the reason for rejecting the nomination paper of the election petitioner that petitioner filed Form 26 without supporting the contents of Form 26 by an affidavit also incorporated in the ordersheet, Ext. 9 that neither representative of the petitioner present during scrutiny sought for adjournment to explain the position nor prayed for time to adjourn the scrutiny proceeding for removal of defect. It has, however, not been disputed before this Court that copy of order dated 11-4-2009 passed in Hindi, Ext. 9 incorporating the conduct of the representative of the election petitioner during scrutiny of the nomination paper of the petitioner was not served on the petitioner.

43. Aforesaid factual position is to be considered in the light of the provisions of Part V of Chapter I of the Act, which includes Sections 30, 33, 33A and 36 of the Act and Rule 4, 4A of the Rules. In the light of Section 30 of the Act, Commission notified the election under notification dated 2.4.2009 fixing 9-4-2009 as the last date for filing nomination paper(s). Petitioner filed his nomination paper on 6-4-2009 in Form 2A providing the necessary information as is required by different parts of the nomination form 2A along with other information required under Sub-section (1)(i)(ii) of Section 33-A inserted by Act 72 of 2002 with effect from 24-8-2002 and Rule 4A inserted by S.O. No.935(E) dated 3-9-2002 providing for further information required under Section 33-A(1)(i)(ii) of the Act vide Form 26 and affidavit in Annexure-1 in compliance of the order of the Commission no.3/ER/2003/JS-II dated 27-3-2003. Returning Officer, Specified Assistant Returning Officer and Deputy Election Officer having received the nomination paper of the petitioner subjected the same including Form 26 and Annexure-1 filed by the petitioner along with his nomination papers to preliminary examination from the technical stand point as per the instruction of the Commission in paragraph 15.1 of Chapter V of the Handbook which clearly instructs the Returning Officer to examine the documents submitted



along with the nomination paper from the technical stand point but not to hold any formal scrutiny of the nomination paper at that stage. Returning Officer, Specified Assistant Returning Officer, Deputy Election Officer and Designated Police Officer examined the documents submitted by the election petitioner along with his nomination paper no sooner the same was delivered to the Returning Officer on 6-4-2009 and after being satisfied that there was no defect in the document(s) submitted by the petitioner along with his nomination paper issued check slip dated 6-4-2009, Ext. 6 to the petitioner indicating that there was no defect in the documents submitted by the petitioner along with nomination papers including Form 26 and kept another copy of check slip dated 6-4-2009 also Ext. 5 duly signed by the Specified Assistant Returning Officer, Designated Police Officer, Deputy Election Officer and the Returning Officer for official use. Having examined the documents appended with the nomination paper on the date of presentation/receipt of the nomination paper i.e. 6-4-2009 and issued check slip of the documents dated 6-4-2009, Exts. 6, 5 indicating that there is no defect in the document(s) filed by the petitioner along with nomination paper, the Returning Officer is required to examine the nomination paper, Form 2A and its parts during scrutiny to decide all objections which may be made to any nomination either by the candidate or his representative or by the Returning Officer on his own motion after summary enquiry as he thinks necessary for ascertaining (a) that the candidate either is not qualified or is disqualified (b) that there has been failure to comply with any of the provisions of Section 33 or 34 or (c) that the signature of the candidate or the proposer on the nomination paper is not genuine.

44. During scrutiny of the nomination paper on 11-4-2009 the Returning Officer did not find any mistake in the nomination form, 2A presented by the petitioner on 6-4-2009 including its different parts. Returning Officer, however, during scrutiny on his own noticed defect in Form 26 submitted by the petitioner along with his nomination form in terms of Section 33-A of the Act and Rule 4A of the Rules as Form 26 filed by the petitioner along with his nomination form was not supported by an affidavit affirmed before a Magistrate of 1st Class, Notary Public or Oath Commissioner of the High Court. Having noticed such defect the Returning Officer, R.W. 3 rejected the nomination paper of the petitioner on the date of scrutiny under order dated 11-4-2009, Annexure-3 appended with part 5 of the four sets of the nomination paper of the petitioner Exts. 8, 8/1, 8/2, 8/3 and Ext. 9 passed in Hindi as Returning Officer was of the view vide paragraphs 58 to 62 of his cross examination that the defect in nomination paper in regard to affidavit including affidavit supporting Form 26 can be permitted to be

removed until 3 P.M. of the last date for filing the nomination paper and not thereafter on the date of scrutiny of the nomination paper. In paragraphs 79 to 84 of the cross examination, Returning Officer, R. W. 3 stated that he passed the rejection order relying on clause 9.6 of Chapter VI of the Handbook, which is referred to in the order sheet maintained by him in Hindi in connection with impugned election dated 11-4-2009, Ext. 9 giving further reasons for rejection of the nomination paper of the election petitioner. According to Returning Officer clause 9.6 of Chapter VI of the Handbook provides for defect of substantial nature in the nomination paper and ground for rejection of the nomination paper vide clause 10.1 (viii) of Chapter VI of the Handbook. In paragraph 83 of cross examination attention of the Returning Officer has been invited towards N.B. beneath sub-clause (viii) of clause 10.1 of Chapter VI, Returning Officer stated thereafter that if the prescribed affidavit is filed but found or considered to be defective or containing false information the nomination should not be rejected on this ground. Returning Officer, however, volunteered in the same paragraph that the present case is in the grey area of sub-clause (viii) and the note below yet ignoring the instruction contained in clause 7 of Chapter VI of the Handbook that there is presumption that every nomination paper is valid unless the contrary is prima facie obvious or has been made out. In case of a reasonable doubt as to the validity of a nomination paper, the benefit of such doubt must go to the candidate concerned and the nomination paper should be held to be valid as in case of improper rejection candidate is prevented from contesting the election. There is legal presumption that the result of the election has been materially affected by improper rejection of the nomination but there is no such legal presumption necessarily in the converse case where a candidate's nomination has been improperly accepted. The Returning Officer ignoring the aforesaid instruction of the Commission placing reliance on clause 9.6 of Chapter VI of the Handbook proceeded to reject the nomination paper of the election petitioner under the impugned order, which even otherwise is contrary to the mandate of Sub-section (2) of Section 36 of the Act whereunder Returning Officer is empowered to reject a nomination paper on three grounds. In the instant case, Form 2A filed by the petitioner together with its six parts can be rejected only on the ground (a) that the candidate either is not qualified or is disqualified (b) that there has been a failure to comply with the provisions of Section 33 or 34 of the Act or (c) that the signature of the candidate or the proposer on the nomination paper is not genuine. From the order of the Returning Officer dated 11-4-2009, Annexure-3 passed in English, certified copy whereof was given to the election petitioner on 12-4-2009 at 10 A.M. as also from the other order dated 11-4-2009,

Ext. 9 passed by the Returning Officer in Hindi, certified copy whereof was not served on the petitioner, it does not appear that any of the aforesaid three grounds as incorporated in Sub-Sections (2)(a)(b)(c) of Section 36 of the Act is made out against the petitioner, as such, order rejecting the nomination paper of the petitioner placing reliance on clause 9.6 of Chapter VI of the Handbook is not in accordance with law as instructions of the Commission issued under Article 324 of the Constitution cannot be allowed to supplant the statutory provisions contained in Sub-section (2) of Section 36 of the Act and the Rules framed thereunder. Nomination paper can be rejected only on the grounds specified in Sub-section (2) of Section 36 of the Act as also for failure of the candidate to furnish any information required under Form 2A and its six parts by the last date fixed for filing of nomination paper. The nomination paper of the election petitioner, in my opinion, should not have been rejected for his failure to support the contents of Form 26 by an affidavit, all the more when no such defect was pointed out to the petitioner after technical examination of Form 26 in the check slip dated 6-4-2009, Exts. 5, 6. Form 26 being not the part of the nomination paper Form 2A, which is in terms of Rule 4 of the Rules, any defect noticed in Form 26 envisaged under Rule 4A of the Rules could have been removed by the petitioner until the date of scrutiny by granting him reasonable opportunity to remove the same. It was the Returning Officer who noticed the defect in Form 26 filed by the petitioner during scrutiny on his own, as such, Returning Officer should have granted the petitioner or his representative, P.W. 2 who was present during scrutiny reasonable opportunity to remove the defect in Form 26 by supporting the same by an affidavit within a reasonable time, either on the same day or by adjourning the scrutiny proceeding to the next day even if representative of the election petitioner, P. W. 2 had neither sought opportunity to explain the defect nor to adjourn the scrutiny proceeding to the next day, as is sought to be made out in the order dated 11-4-2009 passed by Returning Officer in Hindi and kept in the order sheet but admittedly not served on the election petitioner. In this connection, I may refer to the evidence of P. W. 2 in paragraphs 54, 55 where he has categorically stated that he made verbal request during Scrutiny proceeding for grant of time but the same was refused by the Returning Officer. P.Ws. 3, 4 have also contradicted the Returning Officer in the examination in chief and cross examination by categorically stating that they appeared before the Returning Officer in the evening of 11-4-2009 and requested the Returning Officer to either ignore the defect in Form 26 or to permit the election petitioner to remove the defect by obtaining affidavit supporting the contents of Form 26 but the Returning Officer in view of his understanding of the legal position that affidavit

in support of Form 26 cannot be allowed on the date of scrutiny of the nomination paper did not allow the election petitioner and his representatives to remove the defect.

45. Reliance placed by the counsel for respondent no.4 on the judgment of the Andhra Pradesh High Court in the case of Mohd Chand Pasha (supra) is misconceived for the reason that thereunder opportunity was granted to the election petitioner to furnish Form 26 by a particular date and time but he failed to furnish the same within the time granted, as such, the said case has no application to the case in hand as in the instant case no opportunity whatsoever was granted to the petitioner to furnish the affidavit supporting the contents of Form 26. Reliance placed by the counsel for respondent No. 4 on the judgment of the Allahabad High Court in the case of Hari Krishna Lal (supra) and of the Supreme Court in the case of Shaligram Shrivastava (supra) is also misconceived as the judgment in the aforesaid cases has been rendered in connection with election held for 13th Lok Sabha in the year 1999 and bye election held in February, 2000 respectively when there was neither Section 33-A inserted in the Act nor Rule 4A inserted in the Rules nor Part IIIA appended with the nomination form 2A requiring the candidate contesting the election to furnish information concerning conviction for any offence(s) under Sub-section (1) or for contravention of any law specified in Sub-section (2) of Section 8 of the Act or for any other offence(s) for which the candidate has been sentenced to undergo imprisonment for 2 years or more. Aforesaid insertions in the Act, Rules and Form 2A having been made with effect from 24-8-2002, 3-9-2002 and 27-3-2003 much after the judgment rendered in the case of Hari Krishna Lal (supra) and Shaligram Shrivastava (supra), the Court had no occasion to consider the provisions referred to above while rendering the judgment in the case of Hari Krishna Lal (supra) and Shaligram Shrivastava (supra), as such reliance placed over the two judgments is misconceived.

46. In view of my discussion above, I am of the view that the nomination of the election petitioner for contesting the impugned election was improperly rejected by the Returning Officer under order dated 11-4-2009, Annexure-3, Ext. 9, which is set aside and the impugned election of the returned candidate i.e. respondent no.4 is held to be void with direction to the Commission to hold bye election for 25 Khagaria Parliamentary Constituency within reasonable time from the date of receipt/production of a copy of this judgment before the Secretary to the Commission.

Patna High Court, Patna  
Dated 6th day of  
February, 2013

(V. N. SINHA, J)  
[No. 82/BR-HP/(1/2009)/2013]  
By Order,  
TAPAS KUMAR, Pr. Secy.

## आदेश

नई दिल्ली, 4 मार्च, 2013

**आ.अ. 16.**—यतः, भारत निर्वाचन आयोग का यह समाधान हो गया है कि नीचे की सारणी के स्तंभ 2 में विनिर्दिष्ट तमिलनाडु राज्य की विधान सभा के साधारण निर्वाचन, 2011 में, स्तंभ 3 में विनिर्दिष्ट निर्वाचन क्षेत्र से, स्तम्भ 4 में निर्दिष्ट लड़ने वाले प्रत्येक अभ्यर्थी ने लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्धीन बनाए गए नियमों के द्वारा यथा अपेक्षित अपने निर्वाचन व्ययों का लेखा-जोखा दाखिल करने में असफल रहे हैं जैसा कि उक्त तालिका के स्तंभ 5 में दर्शाया गया है;

और यतः, उक्त अभ्यर्थियों ने भारत निर्वाचन आयोग द्वारा सम्युक्त नोटिस दिए जाने के बावजूद उक्त असफलता के लिए न तो कोई कारण या स्पष्टीकरण दिया है, या उनके द्वारा दिए गए अभ्यावेदन, यदि कोई हों, पर विचार करने के उपरान्त निर्वाचन आयोग का यह समाधान हो गया है कि उक्त असफलता के लिए उनके पास कोई उपयुक्त या न्यायोचित कारण नहीं है।

अतः, अब उक्त अधिनियम की धारा 10-क के अनुसरण में, निर्वाचन आयोग निम्न सारणी के स्तंभ 4 में विनिर्दिष्ट व्यक्तियों को, संसद के किसी भी सदन या राज्य या संघ राज्य क्षेत्र की विधान सभा अथवा विधान परिषद् के लिए सदस्य चुने जाने के लिए इस आदेश की तारीख से तीन वर्ष तक की अवधि के लिए निरहिता घोषित करता है :-

## सारणी

| क्रम सं. | निर्वाचन का ब्यौरा              | विधान सभा की क्रम सं. व नाम | निर्वाचन लड़ने वाले अभ्यर्थी का नाम व पता  | निरहिता का कारण  |
|----------|---------------------------------|-----------------------------|--|--|
| 1        | 2                               | 3                           | 4  | 5  |
| 1.       | विधान सभा साधारण निर्वाचन, 2011 | 77-उलुंदुरपेट्टै            | चन्द्र शेखरन एन.,<br>716, अम्मन कोइल स्ट्रीट,<br>सिंगुरिची उलुन्दुरपेट (तालुक),<br>जिला-विलुप्पुरम | अपने निर्वाचन व्यय का लेखा-जोखा दाखिल करने में असमर्थ रहे। |
| 2.       | -वही-                           | -वही-                       | देवार एम.,<br>नोर्थ स्ट्रीट, डाक-कनैयार,<br>उल्लुन्दुरपेट (तालुक),<br>जिला-विलुप्पुरम              | -वही-  |
| 3.       | -वही-                           | -वही-                       | मुथय्यन जी.,<br>कुलाथुकाराई स्ट्रीट,<br>गांव -पादुर, उल्लुन्दुरपेट (तालुक),<br>जिला-विलुप्पुरम     | -वही-  |
| 4.       | -वही-                           | -वही-                       | जगदीशन एल.,<br>46-26, रेड्डीकुप्पम रोड,<br>सडिदापेट्टैई,<br>चेन्नई-600002                          | -वही-  |
| 5.       | -वही-                           | 80-कल्लाकुरिची<br>(अ.जा.)   | राजेश एन.,<br>48, कोट्टईमेदु, सिरूवांगुर रोड,<br>कल्लाकुरिची,<br>विलुप्पुरम टाउन-606202            | -वही-  |
| 6.       | -वही-                           | 193-मदुरई केन्द्रीय         | आर. राधाकृष्णन,<br>9, नोर्थलेन फर्स्ट स्ट्रीट,<br>नोर्थवैली स्ट्रीट, सिम्माकाल,<br>मदुरई-625001    | -वही-  |

| 1   | 2                                 | 3                          | 4  | 5  |
|-----|-----------------------------------|----------------------------|--|--|
| 7.  | विधान सभा साधारण निर्वाचन<br>2011 | 193-मदुरई केन्द्रीय        | के.एम. मुथुराज,<br>सं.-42, चोकार्लिंगा नगर,<br>सेकेंड स्ट्रीट,<br>मदुरई-625010   | अपने निर्वाचन व्यय का लेखा-जोखा<br>दाखिल करने में असमर्थ रहे । |
| 8.  | -वही-                             | 189-मदुरई पूर्व            | पी. राजकुमार,<br>मयन्दीपट्टी,<br>डाक-पोसारीपट्टी,<br>थेरकुथेरू,<br>वाया-जिला-मदुरई                                     | -वही-  |
| 9.  | -वही-                             | -वही-                      | के. तमिलसेल्वी,<br>5, कालियाम्मान,<br>कोविल स्ट्रीट, सेल्लुर,<br>जिला-मदुरई  | -वही-  |
| 10. | -वही-                             | 190-सोलावन्दन<br>( अ.जा. ) | ए. अनन्थाकुमार,<br>डी. नं. 17.3.63-10.817,<br>पोन्नपेरूमल कोविल स्ट्रीट,<br>रमानायकनपट्टी,<br>वेदीपट्टी,<br>जिला-मदुरई | -वही-  |
| 11. | -वही-                             | -वही-                      | एम वजिपीरंथल,<br>75-90, मंदूगल कोविल<br>स्ट्रीट, अय्यनकोट्टई आथुर<br>तालुक, डिन्दुगुल जिला                             | -वही-  |
| 12. | -वही-                             | -वही-                      | ए. वीरन,<br>आई ई/एन ए,<br>मलाईसम्यपुरम कोडिकुलम,<br>वाया, डाक-ओथाकडाई,<br>जिला-मदुरई                                   | -वही-  |
| 13. | -वही-                             | -वही-                      | एन. कृष्णावेनी,<br>3-99 टी अय्यनकोट्टई,<br>थानिचियन वाया-वेदीपट्टी<br>तालुक, जिला-मदुरई                                | -वही-  |
| 14. | -वही-                             | 196-थिरूमंगलम              | एम. मुथुमानी,<br>569/3/160,<br>मेलाकोट्टई,<br>थिरूमंगलम तालुक,<br>मदुरई-625706   | -वही-  |
| 15. | -वही-                             | -वही-                      | पी. मुथ्यु<br>मन्डई,<br>पश्चिम स्ट्रीट,<br>डाक-साथानगुडी,<br>थिरूमंगलम तालुक,<br>जिला-मदुरई                            | -वही-  |



| 1   | 2                               | 3               | 4   | 5   |
|-----|---------------------------------|-----------------|---|---|
| 16. | विधान सभा साधारण निर्वाचन, 2011 | 196-थिरूमंगलम   | पी. जयापन्डी,<br>54/16, पण्डेश्वरर नगर,<br>शोलावन्दन रोड,<br>थिरूमंगलम-625706               | अपने निर्वाचन व्यय का लेखा-जोखा दाखिल करने में असमर्थ रहे । |
| 17. | -वही-                           | 197-उसिलामपट्टी | एन. नागराजन,<br>1-1-23ए, दक्षिण स्ट्रीट,<br>इलुमलाई, पेरड्युर तालुक,<br>जिला-मदुरई          | -वही-   |
| 18. | -वही-                           | -वही-           | पी. मुथईय्या,<br>197 उसिलामपट्टी रोड,<br>थिरूमंगलम, जिला-मदुरई,                             | -वही-   |
| 19. | -वही-                           | -वही-           | के. राजीव,<br>रामाथेवर स्ट्रीट, वार्ड-22,<br>पेरड्युर रोड, उसिलामपट्टी<br>तालुक, जिला-मदुरई | -वही-   |

[ सं. 76/तमिलनाडु-वि.स./2011 ]

आदेश से,

तपस कुमार, प्रधान सचिव

**ORDER**

New Delhi, the 4th March, 2013

**O.N. 16.**—Whereas, the Election Commission of India is satisfied that each of the contesting candidate specified in column 4 of the Table below at the General Election to the Legislative Assembly, 2011 from the state of Tamil Nadu specified in column 2 and held from the constituency specified in column 3 against his/her name has failed to lodge the account of his/her election expenses as shown in column 5 of the said Table as required by the Representation of the People Act, 1951 and the Rules made thereunder:

And whereas, the said candidates have either not furnished any reason or explanation for the said failure even after due notice by the Election Commission or after considering the representation made by them, if any, the Election Commission is satisfied that they have no good reason or justification for the said failure:

Now, therefore, in pursuance of Section 10A of the said Act, the Election Commission hereby declares the persons specified in column 4 of the Table below to be disqualified for being chosen as and for being a member of either house of Parliament or the Legislative Assembly or Legislative Council of a State of Union Territory for a period of three years from the date of this order :—

| Sl. No. | Particulars of Election                            | Sl. No. and Name of Assembly Constituency | Name and Address of Contesting Candidate   | Reasons for Disqualification                          |
|---------|--|---|--|---|
| 1       | 2  | 3   | 4  | 5   |
| 1.      | General Election to the Legislative Assembly, 2011 | 77-Ulundurpettai                          | Chandra Sekaran N.<br>716, Amman Koil Street,<br>Sengurichi Ulundurpet (TK)<br>Viluppuram District | Failed to lodge any account of his election expenses. |

| 1   | 2  | 3                    | 4   | 5   |
|-----|--|----------------------|---|---|
| 2.  | General Election to the Legislative Assembly, 2011 | 77-Ulundurpettai     | Devar M.<br>North Street, Kanaiyar Post<br>Ulundurpet (TK)<br>Viluppuram District                                   | Failed to lodge any account of his election expenses. |
| 3.  | -do-   | -do-                 | Muthaiyan G.<br>Kulathukarai Street,<br>Ulundurpet (TK)<br>Viluppuram District                                      | -do-  |
| 4.  | -do-   | -do-                 | Jagatheesan L.<br>46-26, Reddykuppam Road,<br>Saidapettai Chennai-600002  | -do-  |
| 5.  | -do-   | 80-Kallakurichi (SC) | Rajesh N.<br>48, Kottaimedu,<br>Siruvangur Road,<br>Kallakurichi<br>Villupuram-606202 Town                          | -do-  |
| 6.  | -do-   | 193-Madurai Central  | R. Radhakrishnan<br>9, Northlane, 1st Street,<br>Northvelistreet Simmakal<br>Madurai-625001                         | -do-  |
| 7.  | -do-   | -do-                 | K.M. Muthuraj<br>No. 42, Chokkalinga Nagar<br>Second Street<br>Madurai-625010                                       | -do-  |
| 8.  | -do-   | 189-Madurai East     | P. Rajkumar<br>Mayandipatty,<br>Posaripatty Post<br>Therkutheru Via<br>Madurai District                             | -do-  |
| 9.  | -do-   | -do-                 | K. Tamilselvi<br>5, Kaliyamman Kovil Street,<br>Sellur Madurai District   | -do-  |
| 10. | -do-   | 190-Sholavandan (SC) | A. Ananthakumar<br>D.No. 17.3.63—10.8.17,<br>Ponperumal Kovil ST<br>Ramanaickenpatti, Vadipatti<br>Madurai District | -do-  |
| 11. | -do-   | -do-                 | M. Vazhipiranthai<br>75-90, Mandugal Kovil<br>Street Ayyankottai,<br>Aathur Taluk,<br>Dindugul Dt.                  | -do-  |
| 12. | -do-   | -do-                 | A. Veeran<br>1E/NA Malaisampuram<br>Kodikulam, YA. Othakadai<br>Post, Madurai District                              | -do-  |

| 1   | 2  | 3                     | 4   | 5   |
|-----|--|-----------------------|---|---|
| 13. | General Election to the Legislative Assembly, 2011 | 190-Sholavand AN (SC) | N. Krishnaveni<br>3-99 T Ayyankottai<br>Thanichiyam Via Vadipatti<br>TK, Madurai District           | Failed to lodge any account of his election expenses. |
| 14. | -do-   | 196-Thirumang Alam    | M. Muthumani<br>569/3/160 Melakkottai<br>Thirumangalam Taluk<br>Madurai-625706                      | -do-  |
| 15. | -do-   | -do-                  | P. Muthu<br>Kandal, West Street<br>Sathangudi Post<br>Thirumangalm Taluk<br>Madurai District        | -do-  |
| 16. | -do-   | -do-                  | P. Jayapandi<br>54/16 Pandeewarar Nagar<br>Sholavandan Road<br>Thirumangalam-625706                 | -do-  |
| 17. | -do-   | 197-Usilampatti       | N. Nagarajan<br>1-1-23A South Street<br>Elumalai Peraiyur Taluk<br>Madurai District                 | -do-  |
| 18. | -do-   | -do-                  | P. Muthiah<br>197, Usilampatti Road,<br>Thirumangalam<br>Madurai District                           | -do-  |
| 19. | -do-   | -do-                  | K. Rajeev<br>Ramathevar Street,<br>Ward 22, Peraiyur Road,<br>Usilampatti Taluk<br>Madurai District | -do-  |

[No. 76/TN-LA/2011]

By Order,

TAPAS KUMAR, Pr. Secy.

नई दिल्ली, 8 मार्च, 2013

**आ.अ. 17.**—लोक प्रतिनिधित्व अधिनियम 1950 (1950 का 43) की धारा 13-क की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारत निर्वाचन आयोग अरूणाचल प्रदेश राज्य सरकार के परामर्श से एतद्द्वारा, श्री चन्द्र भूषण, आई.ए.एस. (ए.जी.एम.यू. : 95), को उनके कार्यभार ग्रहण करने की तारीख से आगामी आदेशों तक के लिए अरूणाचल प्रदेश राज्य के मुख्य निर्वाचन अधिकारी के रूप में नामित करता है।

2. श्री चन्द्र भूषण, आई.ए.एस., अरूणाचल प्रदेश राज्य सरकार के अधीन सभी पदभार या किसी कार्य के पदभारों को तत्काल सौंप देंगे या धारण करना समाप्त कर देंगे, जो कि वे ऐसा पदभार ग्रहण करने से पहले धारण कर रहे थे।

3. श्री चन्द्र भूषण, आई.ए.एस., मुख्य निवाचन अधिकारी, अरूणाचल प्रदेश राज्य के रूप में कार्य करते हुए अरूणाचल प्रदेश राज्य सरकार के अधीन किसी भी प्रकार का कोई अतिरिक्त कार्यभार ग्रहण नहीं करेंगे सिवाय इसके कि उनको राज्य सचिवालय में निर्वाचन विभाग के प्रभारी, सरकार का सचिव पदाभिहित किया जायेगा।

[सं. 154/अरुण/2013/नि.यो.अ.]

आदेश से,

सुमित मुखर्जी, सचिव

New Delhi, the 8th March, 2013

**O.N. 17.**—In exercise of the powers conferred by sub-section (1) of Section 13A of the Representation of the People Act, 1950 (43 of 1950), the Election Commission of India, in consultation with the Government of Arunachal Pradesh, hereby nominates Sh. Chandra Bhushan, IAS (AGMU-95) as the Chief Electoral Officer for the State of Arunachal Pradesh with effect from the date he takes over charge and until further orders.

2. Sh. Chandra Bhushan, IAS shall cease to hold and hand over forthwith the charge of all or any charges of work under the Government of Arunachal Pradesh, which he may be holding before such assumption of office.

3. Sh. Chandra Bhushan, IAS while functioning as the Chief Electoral Officer, Arunachal Pradesh shall not hold any additional charge whatsoever under the Government of Arunachal Pradesh except that he should be designated Secretary to the Government in charge of Election Department in the State Secretariat.

[No. 154/ARUN/2013-EPS]

By Order,

SUMIT MUKHERJEE, Secy.